UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

J.M., S.C., A.N., P.T., J.L., R.H., "JOHN DOE", "ROBERT DOE", T.W., M.K., and E.A. individually and on behalf of all other persons similarly situated

Plaintiffs,

v.

SHEREEF M. ELNAHAL M.D., M.B.A., Commissioner, New Jersey Department of Health, as an individual and in his official capacity;

CAROLE JOHNSON, Commissioner, New Jersey Department of Human Services, in her official capacity;

ELIZABETH CONNOLLY, Acting Commissioner, New Jersey Department of Human Services, as an individual and in her official capacity;

VALERIE L. MIELKE, M.S.W., Assistant Commissioner, New Jersey Division of Mental Health and Addiction Services, as an individual and in her official capacity;

TOMIKA CARTER, M.S.W. CEO, Greystone Park Psychiatric Hospital, as an individual and in her official capacity;

TERESA A. McQUAIDE, Former Acting CEO, Greystone Park Psychiatric Hospital, as an individual and in her official capacity;

ROBERT EILERS, M.D., Medical Director, New Jersey Division of Mental Health and Addiction Services, as an individual and in his official capacity;

BRIEF IN SUPPORT OF PRELIMINARY INJUNCTION PURSUANT TO RULE 65

HON. ESTHER SALAS, U.S.D.J.

HON. CATHY L. WALDOR, U.S.M.J

CIVIL ACTION No.: 2:18-cv-17303

(ELECTRONICALLY FILED)

HARLAN M. MELLK, M.D.,
Chief of Medicine, Greystone Park Psychiatric Hospital, as an individual and in his official capacity;

EVARISTO O. AKERELE, M.D.,
Medical Director, Greystone Park Psychiatric Hospital, as an individual and in his official capacity;

LISA CIASTON, ESQ.,
Legal Liaison, New Jersey Division of Mental Health and Addiction Services, as an individual and in her official capacity;

SWANG S. OO, ESQ.,
Deputy Attorney General, State of New Jersey, as an individual and in her official capacity;

JAMES L. FREY,
Employee Relations Officer, Greystone Park Psychiatric Hospital, as an individual and in his official capacity

GURBIR GREWAL, ESQ.,
Attorney General, State of New Jersey, as an individual and in his official capacity; and

PHILIP D. MURPHY, M.B.A.,
Governor, State of New Jersey, as an individual and in his official capacity

Defendants.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

UNITED STATES SUPREME COURT CASES

FEDERAL CIRCUIT CASES

DISTRICT COURT CASES

UNITED STATES CODE

FEDERAL CONSTITUTION

PRELIMINARY STATEMENT

If this Court does not immediately intervene and issue a preliminary injunction to halt the unlawful and unconstitutional conduct of the Defendants, more people will die from what would otherwise be a preventable death. Accordingly, we respectfully submit this memorandum of law and accompanying affidavits in support of Plaintiffs' request for a preliminary injunction pursuant to Federal Rule of Civil Procedure 65. As set forth at length herein, Plaintiffs have demonstrated that a preliminary injunction should issue.

First, it is clear that Plaintiffs are likely to succeed on the merits. As set forth in detail in Section I herein, Plaintiffs allege that Defendants, under color of law, are engaged in an ongoing course of conduct that denies the Federal and State constitutional rights of Plaintiffs and patients at Greystone Park Psychiatric Hospital (hereinafter, "Greystone"). These violations include the deprivation of Plaintiffs' rights under the Fifth and Fourteenth Amendment, under §202 of the Americans with Disabilities Act, 42 U.S.C.S. §12132, and §504 of the Rehabilitation Act, 29 U.S.C.S. §794, and those rights arising under the New Jersey State Constitution and Statutes.

Second, and perhaps most compelling, it is certain that irreparable injury will result if an injunction is not issued. Over six months ago, in December 2018, the Office of the Public Defender filed this class action litigation on behalf of the

Patient-Plaintiffs at Greystone (ECF No. 1). Just since then, a patient has died due to the "deplorable and inhumane" standard of medical care at Greystone. The Greystone Administration took no action to improve the standard of care, but instead attempted another shameful coverup. In a separate but all too familiar story, several other Plaintiffs and Greystone patients, in a string of suicide attempts, climbed on top of the Patient Information Center ("PIC"), popped the ceiling tiles out of the way, wrapped the loosely hanging computer wires around their necks, and tried to asphyxiate themselves. Prior to these suicide attempts, the Defendants had represented that the PICS were no longer a danger to the patients because the wires in the ceilings above were now safely suspended and out of reach. Yet another lie. Another patient successfully set his mattress on fire in an apparent attempt to burn down the hospital. Defendants have been warned time and again there is inadequate fire insulation at Greystone and that one fire has the potential for catastrophic consequences, however, the Administration continues to disregard this danger. Patients decompensate and go on psychotic rampages with no psychiatrists available to order medication or restraint. Entire psychiatric units remain without assigned doctors. Hundreds of assaults have occurred unabated, and serious injuries have resulted. Drug abuse and overdoses persist.

Despite this, Defendants continue their campaign of intimidation and retaliation. Defendants continue to falsify expert court reports and attempt to coerce

and intimidate doctors into changing material testimony. Defendants continue to lie to the public, the courts, and to their own employees regarding the dangers at Greystone. People are getting hurt and worse.

Since the filing of the initial Complaint in this matter, counsel for the Plaintiffs have implored Defendants to take corrective measures to protect the life and safety of patients at Greystone. Despite these good faith efforts to reach a resolution of this matter, Defendants refuse. See Certification of Director Carl J. Herman.

In a remarkable display of humanity and courage, six whistleblowers, at personal risk, have elected to voluntarily offer sworn statements and testify before this Court to save lives currently imperiled at Greystone. At the time of this filing, interviews continue to be scheduled with other whistleblowers who are eager to voluntarily testify before this Court to prevent yet another tragedy from occurring.

It is clear, from the sworn statements submitted herewith, that there is a prospect of irreparable injury if an injunction is not granted. Not only are patients at imminent risk of physical harm, but Defendants have also deprived them of their Constitutional rights, both of which absolutely constitutes the irreparable injury contemplated by Rule 65.

Third, Defendants will suffer no harm if an injunction is issued. Defendants should not be heard to complain that the cost of taking corrected measures to protect patient safety and lives is a harm that weighs against the issuance of an injunction.

In the context of patient safety, any such costs are outweighed by the benefit of preventing further harm to patients. Moreover, if the injunctive relief is granted, not only will the patients benefit, but the staff at Greystone will also benefit from the reduced risk of serious bodily harm that they presently face.

Finally, there is no greater public interest than that of protecting the lives of our citizens, which is precisely what the relief sought through the requested injunction would achieve.

Accordingly, we respectfully submit that it is appropriate and necessary for the Court to issue a preliminary injunction in the instant matter.

FACTUAL BACKGROUND

Dr. Walter Bakun is currently a full-time medical doctor at Greystone and the President of the Medical Staff Organization. See Declaration of Dr. Walter Bakun, at ¶ 13, dated January 12, 2019 ("Bakun Decl."). Dr. Anthony Gotay is currently a full-time clinical psychiatrist at Greystone and the Vice-President of the Medical Staff Organization. See Declaration of Dr. Anthony Gotay, dated January 12, 2019 at ¶ 7 ("Gotay Decl."). Dr. Margarita Gormus is currently a full-time clinical psychiatrist at Greystone and Greystone's former Chief of Psychiatry. See Declaration of Dr. Margarita Gormus, dated January 12, 2019 at ¶¶ 7-8 ("Gormus Decl.") Dr. Yeshuschandra Dhaibar is currently a full-time clinical psychiatrist at Greystone and Greystone's former Chief of Psychiatry in 2014. See Declaration of

Yeshuschandra Dhaibar, dated January 12, 2019, at ¶¶ 1-3 ("Dhaibar Decl."). Dr. Danijela-Ivelja Hill was previously a full-time clinical psychiatrist at Greystone until her resignation in May 2018. See Declaration of Dr. Danijela-Ivelja Hill, dated January 12, 2019, at ¶ 1-3 ("Hill Decl."). Pedro Mendoza was Greystone's former Director of Safety and Fire Department until February 2018. See Declaration of Pedro Mendoza, dated January 12, 2019, at ¶ 1 ("Mendoza Decl.").

I. GREYSTONE PATIENTS ARE AT RISK OF IMMINENT DEATH OR SERIOUS BODILY INJURY.

> "If the current policies and procedures remain, it is my professional opinion that people will die. It would be a statistical anomaly if the Greystone Administration and the Department of Health's policies and procedures do not kill another individual in the near and foreseeable future." See Bakun Decl. at ¶¶ 68.

This is not the opinion of an isolated individual. This sentiment is echoed by Drs. Bakun, Gotay, Gormus, Dhaibar, Hill, and Mr. Mendoza in the Declarations submitted herewith. Their testimony uniformly establishes that Plaintiffs and Greystone patients are at risk of imminent death or serious bodily injury. See Bakun Decl. at ¶¶ 19-21. ("As a direct result of the Administration's depraved indifference to human life, multiple people have died or faced life-threatening conditions, the majority of which are entirely foreseeable and preventable."); See Gotay Decl. at ¶ 9 ("It is not a question of 'if' another patient will die a completely preventable death in the near foreseeable future at Greystone, it is a question of "when."); See Dhaibar

Decl. at ¶ 25 ("Without immediate change, people will die."); See Gormus Decl. at ¶¶ 10-13 ("Safety is nonexistent for patients and staff alike.").

As set forth in the accompanying affidavits, plaintiffs and patients are not receiving adequate medical or psychiatric care. Bakun Decl. at ¶¶ 19-21. As a result, Plaintiffs, and those residing at Greystone, are decompensating at an unprecedented rate. Gormus Decl. at ¶ 11. Entire units are filled with patients who have decompensated due to the lack of psychiatric coverage. Id. at ¶ 12. To allow such dangerous conditions to continue is simply outrageous. See Gormus Decl. at ¶ 10 ("…the Administration has turned Greystone more into a zoo than a hospital); Bakun Decl. at ¶ 20 ("The Greystone Administration treats patients like animals.")

II. DEFENDANTS' REFUSAL TO ADEQUATELY STAFF GREYSTONE SIGNIFICANTLY IMPAIRS THE HEALTH AND SAFETY OF PLAINTIFFS

> "The shortage of psychiatrists has directly caused patients to decompensate and become violent. Due to the Administration's policies, the staff is ill-equipped to deal with these dangers." Bakun Decl. at ¶ 53.

Greystone is currently critically understaffed. Dhaibar Decl. at ¶ 12; see also Gotay Decl. at ¶ 12 ("There is a significant shortage of competent doctors, nurses and mental health technicians currently working at Greystone.") There are not enough nurses, mental health technicians, or psychiatrists. Id. The understaffing is a major factor contributing to Greystone's inability to meet the minimum standard of care for its psychiatric patients. Id.; see also ¶ 14 (as a result of staffing shortages,

"patient care suffers"). Units are routinely not covered by psychiatrists. Id. at ¶ 13. The lack of unit coverage is not an event out of the ordinary. Id. Entire psychiatric units are not covered by psychiatrists. Hill Decl. at ¶¶17-18. There have been instances where four out of the six admissions units, where the patients were acute and psychiatrically unstable, had no covering psychiatrist. "Half the units at Greystone had no covering psychiatrist." Id.

The Greystone Administration and the Department of Health have continuously failed to maintain adequate staffing levels required to provide sufficient medical and psychiatric care to its patients.. Bakun Decl. at ¶52. The Administration has been made aware of the negative impact that understaffing has had on patient care and safety, but has refused to take any corrective action, instead decreasing the amount of staff. Hill Decl. at ¶12; see also Bakun Decl. at ¶¶ 16-17 and 52. Rather, psychiatrists are forced by the Greystone Administration to treat so many patients that "we cannot spend the minimum appropriate amount of time with each patient." Hill Decl. at ¶¶ 5-8. As a result, patients decompensate unchecked, growing assaultive and destructive. Gotay Decl. at ¶ 46.46.

III. ASSAULT LEVELS ARE SO SEVERE AT GREYSTONE THAT PSYCHIATRISTS ARE AFRAID TO TREAT PATIENTS

> "Rampant levels of assaults, unanswered all-available calls for help, drug overdoses, medication mismanagement, and psychiatric decompensation have become an everyday occurrence at Greystone. The

> Greystone Administration's normalization of these occurrences is terrifying." Bakun Decl. at ¶54.

The frequency and degree of violence at Greystone is staggering. "To say that the violence problem currently at Greystone is serious is an understatement. Due to the astronomical rate of assault, doctors and psychiatrists are scared to even walk on the units." Bakun Decl. at ¶ 54. Doctors are afraid to deliver bad news to patients, tell patients that their medications are being adjusted, or tell patients that they require further hospitalization, because of the fear that security cannot protect staff from physical assault. Id. at ¶ 27. Because of this fear, doctors cannot adequately communicate to their patients regarding treatment, medication, and care. Id. at ¶ 28. This further compounds the problem of inadequate treatment. Id.; Gotay Decl. at ¶ 51 ("Currently, the conditions at Greystone are so dangerous that psychiatrists and other staff do not feel safe to conduct basic interactions with patients in order to appropriately assess their psychiatric condition, titrate their medication, and keep them reasonably informed regarding their treatment.") All-available calls for help are made multiple times a day, and assaults continue unabated. Gormus Decl. at ¶ 44). "Patients often continue decompensated assaults for hours before a successful intervention." Id.; see also Hill Decl. at 9 ("Staff were often too scared to deescalate or physically contain assaultive patients. Instead, violent patients freely continue assaulting other patients and destroying property until help arrived, sometimes much later.")

IV. GREYSTONE'S MEDICAL STANDARD OF CARE HAS BEEN COMPLETELY DESTROYED BY DEFENDANTS, WHICH HAS DIRECTLY LED TO THE LOSS OF LIFE

In 2017, the Greystone Administration and Department of Health diminished Greystone's standard of medical care by implementing a policy lowering the emergency response in life threatening situations from Advanced Cardiac Life Support to Basic Life Support. Bakun Decl. at ¶ 26. Prior to this policy change, Advanced Cardiac Life Support was the standard operating procedure at Greystone since 2008. Id. at ¶ 27. Due to the inherent risks of the types of medication frequently prescribed at Greystone, and the nature of the patient population, "Greystone's downgrading of its emergency care from supporting Advanced Cardiac Life Support to Basic Life Support is just another example demonstrating a depraved indifference to human life." Gotay Decl. at ¶ 50. It is inconceivable why the Greystone Administration would choose to downgrade its emergency care where there is a proven track record of saving lives at Greystone through the use of Advanced Cardiac Life Support. Bakun Decl. at 34-37. Not only have Defendants chosen to downgrade this emergency care, but they have gone so far as to consider disciplining a doctor for utilizing a modality of care beyond Basic Life Support to save a patient's life. Id.

For example, on one occasion, Dr. Bakun used Advanced Cardiac Life Support to save a patient's life who slit her wrist during the night as a suicide attempt.

Bakun Decl. at ¶¶ 38-39. When she was discovered in the morning by staff, she was unresponsive, completely pale from blood loss, and her blood had seeped through her mattress and formed a pool on the floor. The member of the Greystone Administration, who was the first to arrive on the scene, did nothing but wait for the basic ambulance to arrive and continued to allow the patient to die. Id. When Dr. Bakun arrived and attempted to give life-saving aid, the Administrator physically obstructed his access to further the Administration's policy of Basic Life Support and non-intervention. Dr. Bakun was told to 'go away,' and 'we don't need you.' No one was doing anything to save this patient's life; no one was even in the room to stop the bleeding. The patient was in stage 3 to stage 4 hemorrhagic shock and at imminent risk of death. Dr. Bakun utilized Advanced Cardiac Life Support to save this patient's life. Id. at ¶¶ 38-39. ("In my professional judgement, not only would it have been inhumane and reckless for me to 'just wait until the basic ambulance to arrive,' it would have likely cost this patient her life.")

Defendants' policy of solely using Basic Life Support has directly led to patient deaths. Bakun Decl. at ¶¶46-51. For example, on at least two occasions, patients have died because the code cart did not arrive in time and the responding physician was unable to render effective aid. Id. On another occasion, a Greystone employee died while on duty because critical lifesaving equipment had been removed from the code carts. Id. On another occasion, a Greystone patient suffered

cardiac arrest and died because there was no epinephrine – a necessity in any adequately equipped code cart - in the code cart to restore his blood pressure and save his life. Id. In yet another example, a Greystone patient died from a pulmonary embolus. His death could have been prevented with Advanced Cardiac Life Support. Greystone's lack of care is unconscionable and a knowing disregard for the standard of care necessary for doctors to save patient lives. Id. at ¶¶ 46 - 51.

V. THE GREYSTONE ADMINISTRATION ENGAGES IN COVERUPS, LIES, FRAUD, AND OUTRIGHT CRIMINAL CONDUCT

> "In 2017, I was ordered by the Greystone Administration to modify the records of assaults submitted to the Public Employees Occupational Safety and Health of the Department of Health." Mendoza Decl. at ¶ 7.

Patient lives and safety are at constant risk under the present conditions at Greystone. The problem is compounded, however, by Defendants' efforts to disguise these conditions through systemic fraud and deception to mislead regulatory agencies, courts, its staff, and the public from any authority that could intervene on Plaintiffs' behalf. Bakun Decl. at ¶ 57. Defendants have tampered with data to reflect a significantly lower rate of assault. These fraudulent sets of data have been submitted to New Jersey State regulators. Mendoza Decl. at ¶ 8. "[T]he Administration engaged in a massive coverup, where fraud, intimidation, deceit, and manipulation were commonplace." Mendoza Decl. at ¶ 12. This includes Defendants' instructions to staff-psychiatrists to conceal from the courts a lack of an

adequate basis of patient knowledge to testify during court hearings. Gotay Decl. at ¶ ¶ 39. Defendants have held CPR training courses where it does not provide CPR training scenarios, but merely hands out passing certifications to attendees. Bakun Decl. at ¶¶ 57-64. Similarly, Defendants have forced the doctors to sign and fraudulently attest to a log-rolling training doctors had yet to receive. Id. The Greystone Administration has also misrepresented that critical life-threatening conditions at Greystone have been fixed. Bakun Decl. at ¶ 59. (representing that dangers above the Patient Information Center, where many patients remove the tiles and grab the suspended wires to attempt to asphyxiate themselves, have been secured when they have not). The Defendants' practice of misrepresenting the dangerous conditions at Greystone only serves to deepen the danger to Plaintiffs and Greystone patients.

VI. THE GREYSTONE ADMINISTRATION ROUTINELY ENGAGES IN WHISTLEBLOWER RETALIATION

When Dr. Gormus resigned as Chief of Psychiatry, she left a letter of resignation detailing the problems, and openly protested the Greystone Administration's conduct, stating that that conduct jeopardizes the lives of the patients. Gormus Decl. at ¶¶ 27-28. The retaliation against her began immediately. Id. She is currently assigned approximately 47 forensic patients, which is easily double the average caseload. Id. Furthermore, forensic patients are the most difficult, dangerous, and time-consuming cases, due to their acuity. Dr. Gormus

currently cannot meet an adequate standard of care for her patients. This is not just the product of the Greystone Administration's neglect – this is their intended consequence. According to Dr. Gormus, the only reason she has not yet resigned is because she knows things will get even worse for the patients if she leaves. Id.

When he was the Acting-President of the Medical Staff Organization (due to Dr. Bakun's involuntary leave), Dr. Gotay was bombarded with over double the caseload of what the average staff-psychiatrist was assigned. Gotay Decl. at ¶¶ 37-38. This is in direct violation of Greystone's Bylaws, which hold that the President, due to the need to conduct managerial duties, can only be assigned half the caseload of a regular staff-psychiatrist. Id. It was made clear to Dr. Gotay by the Greystone Administration's threats as to their intention to retaliate against him. For example, he was threatened with discipline for 'not completing' the work of the MSO even though the Administration knew he was covering four times the patient load that the MSO president should cover." Id.

In March 2018, the Greystone Administration and Department of Health suspended Dr. Bakun as a form of retaliation for his outspoken views and criticism of their policies. Bakun Decl. at 6. The committee reviewing the suspension concluded that there was no justification for the suspension. Instead, it was pretextual. Id. The Greystone Administration circumvented the Medical Staff Bylaws to suspend Dr. Bakun. Id. The committee reviewing the suspension

concluded that there was no justification for the suspension. Instead, it was pretextual. Id.

As for Dr. Hill, the Administration not only ignored her injury [after she was assaulted], but made up stories about her, and attempted to intimidate her to remain silent regarding the unsafe conditions at the facility by threatening her, humiliating her, and overworking her. Hill Decl. at ¶ 14.

Finally, because of Mr. Mendoza's refusal to engage in their conspiracy, the Greystone Administration sustained a campaign of hostility, retaliation, and slander against him that ultimately resulted in his removal from Greystone on February of 2018. Mendoza Decl. at ¶10.

VII. PSYCHIATRISTS CANNOT CARE FOR THEIR PATIENTS BECAUSE DEFENDANTS HAVE DESTROYED THE PSYCHIATRIC STANDARD OF CARE AT GREYSTONE

Patients need to be adequately monitored and cared for to meet a basic standard of care. At a minimum, there needs to be consistent medication management, consistent blood work monitoring, consistent psychiatric care, and consistent nursing care. According to Dr. Dhaibar, as a result of the Greystone Administration's purposeful conduct, none of these standards are met. Dhaibar Decl. at ¶¶ 15-16. Currently, there is neither consistent nor continuous psychiatric and nursing care. There is no adequate treatment plan for patients, because there is not adequate staffing to carry out the basic functions of a psychiatric hospital. Id.

According to Dr. Gotay, the Greystone Administration is much more concerned with controlling its public façade and avoiding personal accountability than actually understanding and meeting the basic needs of its patients. Gotay Decl. at ¶¶ 40-44. For example, in 2017, Dr. Gotay, along with his colleagues, submitted a time study based on what they clinically determined to be the minimum ratio of psychiatrists-to-patients that would give them barely enough time to meet a minimum standard of care. That, too, was completely ignored. Id. It is critical that patients on psychiatric medication are given regular blood toxicity monitoring and Abnormal Involuntary Movement Scale Testing ("AIMS"). Failure to conduct regular blood toxicity monitoring can lead to serious health consequences, including death. Id. Failure to regularly conduct AIMS testing can lead to severe tardive dyskinesia for life, even if the medication is discontinued. Lapses in testing and monitoring are a frequent occurrence, due to the Greystone Administration's failure to provide enough staffing. Id. Recently, the Quality Assurance Committee had found that the prevalence of lapses in testing is directly correlated with units without assigned permanent psychiatrists. Id.

According to Dr. Hill, patients were routinely psychiatrically undermedicated or overmedicated due to the lack of time. Hill Decl. at 15-16. Mismedication often results in decompensation for the patient. Id. Patients routinely self-harming, left screaming to themselves, banging their heads on the floor or against the walls,

engaging in assaultive behavior, and needing to be held down. Major incidents occurred constantly. Id. "Due to the lack of appropriate medication monitoring, psychiatrists were limited by the Greystone Administration regarding the type of psychiatric medication they were allowed to prescribe." Id. at ¶¶ 19-20. This prevented psychiatrists from properly medicating certain patients who required these medications to properly stabilize. Doctors were specifically instructed by the Greystone Administration to not prescribe the psychiatric medications which would require the most blood monitoring. Id. "Those medications, however, are oftentimes the most effective and appropriate medications to administer." Id.

In addition, the Greystone Administration routinely pressured the doctors to take patients off one-to-one observation, despite the risks it posed. Id. at 23. Already overworked, the Administration would force the psychiatrists to spend hours every week justifying their decisions to keep patients on one-to-one. The Administration arbitrarily took patients off one-to-one regardless of the psychiatrist's clinical assessments. Id. The Greystone Administration also forced Dr. Hill to prematurely take patients off one-to-one observation. In one recent instance, despite her repeated begging, the Greystone Administration stopped the one-to-one observation of a decompensated patient acutely suffering from pica, a disorder characterized by a compulsive ingestion of non-edible substances, such as sharp objects, metal, stone, and feces. The Administration did not even bother to place the patient on

intermittent observation or ask the unit nurses to pay close attention to her. As a result, shortly after the patient was discontinued from one-to-one, she broke off a radio antenna and swallowed it. The patient almost died, and likely will suffer from health consequences for the rest of her life. When the patient was in surgery, a member of the Greystone Administration retroactively put in paperwork into the chart, clinically justifying the discontinuation." Gormus Decl. at ¶ 24.

VIII. DEFENDANTS REFUSE TO REMEDIATE IMMINENTLY DANGEROUS CONDITIONS IN GREYSTONE'S INFRASTRUCTURE

> Just recently, a patient set his mattress on fire in my unit in an attempt to burn down the hospital. Should a staff member have not walked by when he did, there could have been a catastrophic loss of life. It is commonly known that there is inadequate fire insulation between the units of the hospital." Gormus Decl. at ¶ 43.

By way of background, Greystone's contractor, Torcon, had failed to fulfill its contractual obligations during the building of the current Greystone facility, which included the failure to install Fire Stop between major structural support beams. Without Fire Stop, the heat from a potential fire could warp the support beams, causing total structural failure and collapse. The State recovered $17 million dollars from Torcon in litigation relating to Torcon's failure. However, these funds have not been utilized to make Greystone fire safe. Critical infrastructure problems that cause direct threats to the safety of Plaintiffs and Greystone patients were never addressed. Mendoza Decl. at ¶¶ 16-19.

In addition to this critical safety issue, there is also the frequent occurrence of medication errors, as Greystone does not have an Electronic Health Record system. Dhaibar Decl. at ¶ 17. Units are not properly designed to prevent foreseeable tragedies. For example, the Patient Information Center is structurally designed in a way that is a hotbed for assaults and suicide attempts. Hill Decl. at ¶ 7. Patients routinely escaped the hospital by kicking open the security doors. Id. at ¶ 10.

LEGAL ARGUMENT

I. STANDARD FOR PRELIMINARY INJUNCTIVE RELIEF.

In order to obtain preliminary injunctive relief, a moving party must demonstrate (1) a likelihood of success on the merits and (2) a prospect of irreparable injury if the injunction is not granted. Reilly v. City of Harrisburg, 858 F.3d 173, 176 (3d Cir. 2017) (concluding that when evaluating whether a preliminary injunction is appropriate, "[t]he first two factors of the traditional standard are the most critical.") (quoting Nken v. Holder, 556 U.S. 418, 434 (2009)).

In addition, "the district court . . . should take into account, when they are relevant, (3) the possibility of harm to other interested persons from the grant or denial of the injunction, and (4) the public interest." Reilly, 858 F. 3d at 176-179. (ruling that once the movant for a preliminary injunction satisfies the first two most critical factors, the court should consider the remaining two factors, and determine, in its sound discretion, if all four factors balance in favor of granting the requested

relief); Oburn v. Shapp, 521 F.2d 142, 147 (3d Cir. 1975); Bradley v. Pittsburgh Bd. Of Educ., 910 F.2d 1172, 1175 (3rd Cir. 1990).

As set forth below and in the six whistleblower Declarations submitted herewith, all four factors heavily favor issuing a preliminary injunction.

II. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS UNDER SECTION 1983 OF TITLE 42 OF THE UNITED STATES CODE.

Section 1983 of Title 42 of the United States Code is a critical component in civil rights law, as it is the vehicle which authorizes individuals to enforce their federal constitutional rights, and federal statutory rights against state and local officials. Mitchum v. Foster, 407 U.S. 225, 239 (1972). Congress enacted Section 1983 as part of the Civil Rights Act of 1871 in order to prevent abuse of the Constitution by local officials. Monell v. Dep't of Soc. Servs., 436 U.S. 658, 669 (1978). Congress determined that each citizen has a right to demand that the government execute the laws in a faithful and impartial manner. Congress intended Section 1983 "to give a remedy to parties deprived of constitutional rights . . . by an official's abuse of his position." Monroe v. Pape, 365 U.S. 167, 172 (1961).

Section 1983 states, in pertinent part, as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the

> Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

42 U.S.C. 1983. Section 1983 established the role of the federal government as a guarantor of basic federal rights against state power by opening the federal courts to private citizens. Mitchum, 407 U.S. at 238-39. The purpose of Section 1983 is to "deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights." Wyatt v. Cole, 504 U.S. 158, 161 (1992).

To bring a Section 1983 claim, claimants must satisfy two essential threshold elements and prove that: (1) the conduct complained of was committed by an individual acting under color of state law; and (2) that the conduct deprived the plaintiff of rights, privileges, or immunities secured by the Constitution or laws of the United states. Schneyder v. Smith, 653 F.3d 313, 318-19 (3d Cir. 2011) (citing Parrat v. Taylor, 451 U.S. 527, 535 (1981) overruled in part on other grounds by Daniels v. Williams, 474 U.S. 327 (1986)). Under Section 1983, claimants are not required to prove state of mind beyond what is necessary to prove the underlying constitutional violation. Daniels, 474 U.S. at 329-30. Additionally, state remedies are generally irrelevant. See Zinermon v. Burch, 494 U.S. 113, 125 (1990)

(explaining that plaintiffs may bring Section 1983 claims although other state Constitutional or statutory remedies may available).

Establishing likelihood of success on the merits with respect to Plaintiffs' Section 1983 claims "requires a showing significantly better than negligible but not necessarily more likely than not." Reilly, 858 F.3d at 179.

A. State Officials Sued in their Individual Capacities are "Persons" within the Meaning of Section 1983 and are not Protected by Immunity

In order to successfully establish a claim under Section 1983, Plaintiffs must be able to show that Defendants, acting under the color of law, are engaging in an ongoing course of conduct to deny the Constitutional rights of patients at Greystone Hospital. A state actor in his or her individual capacity fits comfortably within the statutory term "person" under Section 1983. Hafer v. Melo, 502 U.S. 21, 27 (1991). Here, it is important for this Court to note that the Eleventh Amendment does not bar suits under Section 1983 such as this, nor are state officers absolutely immune from personal liability under Section 1983 solely by virtue of the 'official' nature of their acts. The Defendants in the present case do not enjoy the affirmative defense of qualified immunity. Qualified immunity does not apply where state actors violate "clearly established statutory or constitutional rights of which a reasonable person would have known." Wright v. City of Philadelphia, 409 F.3d 595, 699-700 (3d Cir. 2005) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). A right is clearly established if "it would be clear to a reasonable officer that his conduct was unlawful

in the situation he confronted." Reedy v. Evanson, 615 F.3d 197, 224 (3d Cir. 2010) (quoting Saucier v. Katz, 533 U.S. 194, 202 (2001)).

As set forth in detail in the accompanying whistleblower Declarations, Defendants had actual knowledge of – or participated in – the daily and rampant violations of clearly established constitutional rights of Plaintiffs and of the Greystone patient population. These violations, which include institutional deprivation of basic medical care and a universal inability to provide the minimum standard of care for its psychiatric patients, are overt and unlawful. As state actors, the Defendants condone these conditions and permit them to continue unabated. They are, therefore, not entitled to Eleventh Amendment immunity.

B. Defendants are Acting "Under the Color of State Law" within the Meaning of Section 1983

To establish individual liability under Section 1983, the plaintiff must show that a state actor, acting under color of state law, caused the deprivation of a federal right. See e.g., Kentucky v. Graham, 473 U.S. 159 (1985); Monroe v. Pape, 365 U.S. 167 (1961). Conduct under color of state law for the purposes of Section 1983 requires that the actor exercised power "possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law." West v. Atkins, 487 U.S. 42, 49 (1988) (holding that "a physician who is under contract with the State to provide medical services to inmates at a state-prison hospital on a part-time basis acts 'under color of state law,' within the meaning of

42 U.S.C. § 1983, when he treats an inmate.") (internal citations omitted). State employment is sufficient to consider a defendant a state actor. Lugar 26 v. Edmondson Oil Co., Inc., 457 U.S. 922, 935 (1982) ("[C]onduct satisfying the state-action requirement of the Fourteenth Amendment satisfies [Section 1983's] requirement of action under color of state law.")

Liability under Section 1983 "attaches only to those wrongdoers 'who carry a badge of authority of a State and represent it in some capacity, whether they act in accordance with their authority or misuse it.'" National Collegiate Athletic Association v. Tarkanian, 488 U.S. 179, 191 (1988) (quoting Monroe v. Pape, 365 U.S. 167, 172 (1961)).

As set forth above and in the accompanying Declarations, the Defendants each acted under color of law, thereby bringing themselves within the scope of Section 1983.

C. The Actions of the Defendants are Depriving the Plaintiff Class of its Federally Protected Constitutional Rights

The Fifth and Fourteenth Amendment prevent any State from the depriving "any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U. S. Constitution Amend. V and XIV. "The state-created danger theory is a viable mechanism for establishing a constitutional claim under 42 U.S.C.S. § 1983." Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 903 (3d Cir. 1997). To recover on a theory of

state-created danger, "a plaintiff must prove four elements: (1) the harm ultimately caused was foreseeable and fairly direct;" (2) the defendant possessed the requisite degree of culpable intent; "(3) there existed some relationship between the state and the plaintiff; and (4) the state actors used their authority to create an opportunity that otherwise would not have existed" for harm to occur. Estate of Smith v. Marasco, 318 F.3d 497, 506 (3d Cir. 2003).

Here, the harm was not only foreseeable, it was actually foreseen. Defendants were "repeatedly and insistently notified [by their employees] regarding dire deficiency in safety, staffing, and the standard of care provided for patients at Greystone." Gotay Decl. at ¶ 20. Employees had entered into a "No Confidence Resolution," and told the Defendants "every chance it had" that its "utter failures" would lead to death and serious bodily injury. See, e.g., Bakun Decl., Gotay Decl., and Gormus Decl., Dhaibar Decl., Hill Decl., and Mendoza Decl. Directness concerns whether the chain of causation is too attenuated for liability to attach. Here, the Defendants' official policies that intentionally downgraded the medical standard of care, reduced staffing through intimidation and retaliation, purposeful dismantling of its psychiatric standard of care, including its one-to-one observation system, has directly resulted in the death and serious bodily harm of numerous patients. See, e.g., Bakun Decl., Gotay Decl., and Gormus Decl.

The Third Circuit has held that "[t]he second prong . . . asks whether the state actor acted with willful disregard for or deliberate indifference to plaintiff's safety." Morse, 132 F.3d at 910. "In other words, the state's actions must evince a willingness to ignore a foreseeable danger or risk." Id. The Defendants not only acted in deliberate indifference to the Plaintiffs, they engaged in a multitude of unlawful coverups to hide its malfeasance. See, e.g., Mendoza Decl.. "Except in those cases involving either true split-second decisions or, on the other end of the spectrum, those in which officials have the luxury of relaxed deliberation, an official's conduct may create state-created danger liability if it exhibits a level of gross negligence or arbitrariness that shocks the conscience." Marasco, 318 F.3d at 509. "The Greystone Administration takes any measure to advance its own agenda. For example, this culture empowered one Greystone administrator to potentially allow a patient to bleed to death rather than permit the necessary medical intervention." Bakun Decl. at ¶ 20.

The third element requires "a relationship between the state and the person injured . . . during which the state places the victim in danger of a foreseeable injury." Kneipp v. Tedder, 95 F.3d 1199, 1209 (3d Cir. 1996) (holding that jury could find third element met where defendant, "exercising his powers as a police officer, placed [the plaintiff] in danger of foreseeable injury when he sent her home unescorted in a visibly intoxicated state in cold weather"). Here, the third element is easily satisfied

given the nature of the relationship between Greystone and its patients. Where Greystone is described by its own doctors as more a "zoo" than a hospital and where "safety is nonexistent for patients and staff alike" (Gormus Decl. at ¶¶ 10-13), the Defendants undoubtedly have a relationship with the patients through which they place the patients in danger of foreseeable injury.

"The final element . . . is whether the state actor used its authority to create an opportunity which otherwise would not have existed for the specific harm to occur," Morse, 132 F.3d at 914, or, in other words, "whether, but for the defendants' actions, the plaintiff would have been in a less harmful position," Marasco, 318 F.3d at 510. As Dr. Gormus states, he attempted to improve the conditions at Greystone, but was blocked from doing so by the Administration:

> "During my tenure as Chief of Psychiatry, I attempted to address the safety concerns at Greystone, but was actively prevented to do so by the Administration. On or around May 2018, the hospital was down to as few as 6 psychiatrists and approximately 7 units were without covering psychiatrists. (As a general rule, if any psychiatric unit does not have an assigned psychiatrist for approximately 30 days, the entire patient population of the unit will become psychiatrically decompensated.) **The rate of psychiatric decompensation was so high it was more akin to something one would see in an inaccurately depicted movie rather than the reality of a modern hospital. I believed that if I didn't act soon, patients would die.** Therefore, I called for an emergency meeting with the psychiatrists to address the issues, as was within the scope of my responsibilities as the Chief. However, the Administration cancelled the meeting, told me **'You do not know what you are doing,' 'there is no emergency,' 'there is no shortage of psychiatrists,' and that I was 'creating a panic and being a drama queen.'** As this point, the Administration permanently took away my responsibility of assigning cases to doctors."

Gormus Decl. at ¶ 26. (emphasis added).

Defendants here also deprived Plaintiffs of their due process rights through a failure to train, supervise or adequately hire their employees. The involuntarily committed enjoy constitutionally protected interests in conditions of reasonable care and safety, reasonably nonrestrictive confinement conditions, and such training as may be required by these interests. Youngberg v. Romeo, 457 U. S. 307 (1982).

A state's constitutional duty owed to the involuntarily committed arises when the state takes a person into its custody and holds him there against his will. In the substantive due process analysis, it is the state's affirmative act of restraining the individual's freedom to act on his own behalf - through incarceration, institutionalization, or other similar restraint of personal liberty - which is the "deprivation of liberty" triggering the protections of the Due Process Clause. DeShaney v. Winnebago, 489 U.S. 189 (1989).

The combination of a patient's involuntary commitment and his total dependence on his custodians obliges the government to make reasonable provision for the patient's welfare. It is a violation of substantive due process if the personnel at the mental institution where he is confined fails to exercise professional judgment. The state's affirmative duty to provide a reasonably safe environment for the involuntarily committed, just like the other DeShaney exception for state-created dangers, does not depend upon a finding of a custom or policy.

In Youngberg, the State conceded "a duty to provide adequate food, shelter, clothing, and medical care" for the involuntarily committed. 457 U.S. 307 at 324. The Court agreed that "these are the essentials of the care that the State must provide." Id. It then went on to observe that the "State also has the unquestioned duty to provide reasonable safety for all residents and personnel within the institution." Id.

As to "the proper standard for determining whether the State adequately has protected the rights of the involuntarily committed mentally retarded," the Youngberg Court adopted a standard that it felt reflected "the proper balance between the legitimate interests of the State and the rights of the involuntarily committed to reasonable conditions of safety and freedom from unreasonable restraints"; i.e., one that "requires that the courts make certain that professional judgment in fact was exercised." Id. at 321.

Here, Defendants through hiring and personnel decisions, have failed to provide reasonable conditions of safety. For example, the Greystone Administration has failed to administer the appropriate standard of care for its patients. As a result, patients have been seriously hurt and some have died. Bakun Decl. at ¶¶ 19-23 and 34-38. Patients psychiatrically decompensate at unprecedented rates. Entire units are filled with patients that have decompensated due to lack of psychiatric coverage. Gormus Decl. at ¶¶ 10-13. Rather than increasing staffing, the Administration

repeatedly decreased the amount of active staffing, including doctors and nurses. Hill Decl. at ¶ 12. The shortage of psychiatrists has directly caused patients to decompensate and to become violent. Bakun Decl. at ¶ 53. Moreover, the Administration caused multiple doctors and psychiatrists to resign in a short period of time. Bakun Decl. at ¶ 17. These institutional decisions caused and exacerbated the horrific conditions in which Plaintiffs and the Greystone patient population are confined. Defendants' failures in this respect constitute a deprivation of Plaintiffs' due process rights.

D. Defendants Violated Rights Guaranteed by Federal Statutes.

Section 1983 can provide a cause of action against persons acting under color of state law who have violated rights guaranteed by federal statutes. See Gonzaga University v. Doe, 536 U.S. 273, 279 (2002); Blessing v. Freestone, 520 U.S. 329, 340-41 (1997); Pennhurst State Sch. & Hosp. v. Halderman, 451 U.S. 1, 28 (1981); Maine v. Thiboutot, 448 U.S. 1, 4 (1980). Some decisions have stated that there is a presumption that § 1983 provides a remedy for violations of federal statutes. See Livadas v. Bradshaw, 512 U.S. 107, 133 (1994); S. Camden Citizens in Action v. N.J. Dep't of Envtl. Prot., 274 F.3d 771, 794 (3d Cir. 2001) (stating that there is a presumption that Section 1983 is available once a federal right (as opposed to a violation of federal law) is established)).

"The remedies for violations of § 202 of the Americans with Disabilities Act (ADA), 42 U.S.C.S. § 12132, and § 504 of the Rehabilitation Act (RA), 29 U.S.C.S. § 794, are coextensive with the remedies available in a private cause of action under Title VI of the Civil Rights Act of 1964. Therefore, U.S. Supreme Court precedent construing Title VI governs enforcement of the RA and the ADA as well." S.H. v. Lower Merion Sch. Dist., 729 F.3d 248, 250 (3d Cir. 2013). Those remedies include declaratory and injunctive relief, and, in certain circumstances, money damages. See, e.g., Guardians Ass'n v. Civil Service Comm'n of City of New York, 463 U.S. 582, (1983); S.H., 729 F.3d at 262. "A private cause of action is implicit in § 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C.S. §§ 2000d et seq., and § 504 of the Rehabilitation Act of 1973, 29 U.S.C.S. § 794, for plaintiffs who seek declaratory and injunctive relief." NAACP v. Med. Ctr., Inc., 599 F.2d 1247, 1248 (3d Cir. 1979).

The Americans with Disabilities Act, 42 U.S.C. Section 12132 and the regulations promulgated thereto, 28 C.F.R. 35, state that "a public entity may not, through its methods of administration, deny public benefits or subject individuals with disabilities to discrimination on the basis of such disabilities." Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any

such entity." 42 U.S.C. §12132. Section 504 of the Rehabilitation Act of 1973, which is codified as 29 U.S.C. Section 794, and the regulations promulgated thereto, 28 C.F.R. Part 41, state that "no public entity receiving federal funds shall deny any person the benefits of a public service, or otherwise subject a disabled person to discrimination, on the basis of that person's disability."

Moreover, state entities are not immune to suit by application of the Eleventh Amendment.

> (1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 USCS § 794], title IX of the Education Amendments of 1972 [20 USCS §§ 1681 et seq.], the Age Discrimination Act of 1975 [42 USCS §§ 6101 et seq.], title VI of the Civil Rights Act of 1964 [42 USCS §§ 2000d et seq.], or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.
>
> (2) In a suit against a State for a violation of a statute referred to in paragraph (1), remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State.

"42 U.S.C.S. § 2000d-7 clearly notifies the states that by accepting federal funds under the Rehabilitation Act, they will waive their Eleventh Amendment immunity to Rehabilitation Act claims. Circuit courts have consistently seen § 2000d-7 as an unambiguous statement of Congress's intent to condition acceptance of federal funds on the waiver of Eleventh Amendment immunity from claims under such

enumerated statutes as the Rehabilitation Act of 1973 or Title IX." A.W. v. Jersey City Pub. Sch., 341 F.3d 234, 236 (3d Cir. 2003).

Here, as a result of the Defendants' conduct "Greystone patients, individuals who suffer from disabilities, are being denied appropriate medical care." Bakun Decl. at ¶ 25.

III. THERE IS AN OVERWHELMING PROSPECT OF IRREPARABLE INJURY SHOULD THE INJUNCTION NOT BE GRANTED

The threat of death or injury for want of sufficient care is considered sufficient to warrant injunctive relief. See, e.g., Sullivan v. City of Pittsburgh, 811 F.2d 171, 179 (3d Cir. 1987) (holding that denial of proper care, supervision and support to recovering alcoholics threatened risk of immediate physical harm or death sufficient to sustain application for immediate injunctive relief); see also Oxford House-Evergreen v. City of Plainfield, 769 F. Supp. 1329, 1339-40, 1345 (D.N.J. 1991) (deprivation of stable living environment and support considered irreparable harm for recovering addicts).

Here, if the current policies and procedures remain and if the Greystone Administration continues to do nothing, patients will die. Bakun Decl. at ¶ 68. Since 2014, the psychiatrists have, through collective and individual action, repeatedly pleaded with the Greystone Administration to fix the man-made dangers which foster an unprecedented level of violence. Id. It would be a statistical

anomaly if the Greystone Administration and the Department of Health's policies and procedures do not kill another individual in the near and foreseeable future. Bakun Decl. at ¶ 68. The Defendants have failed to administer the appropriate standard of care for its patients. As a direct result of their actions and omissions, patients have died and have been seriously hurt. The risk of patient mortality is currently imminent and dire. Gormus Decl. at ¶ 47. Without immediate change, people will die. Dhaibar Decl. at ¶ 26.

The patients of Greystone are a vulnerable constituency whose safety and lives are constantly at risk. Absent the relief sought, Greystone's population will suffer irreparable harm.

IV. A SIGNIFICANT POSSIBILITY OF HARM EXISTS TO OTHER INTERESTED PERSONS SHOULD THE INJUNCTION BE DENIED

Particularly in cases such as this, where important public issues which implicate significant policy considerations are involved, it is appropriate that the court consider possible harm to other interested parties resulting from the grant or denial of the preliminary injunction. See Punnett v. Carter, 621 F.2d 578, 587 (3d Cir. 1980); Oburn v. Shapp, 521 F.2d 142, 151-52 (3d Cir. 1970). Although administrative compliance costs can be considered as a potential consequential harm, in the context of patient safety, such costs are outweighed by the benefit of preventing further harm to patients. See, e.g., Rennie v. Klein, 476 F. Supp. 1294, 1311 (D.N.J. 1979) (granting preliminary injunction restraining hospital and staff's

use of psychoactive drugs without patients' freely given consent and without procedural safeguards to protect patients' constitutional rights).

Here, the injunctive relief sought will have, at most, a marginal impact on Defendants. On the other hand, the relief, if granted, will benefit not only the patients of Greystone, but Greystone's staff as well. Both the patients and staff members at Greystone are being assaulted on a daily basis. See Hill Decl. at ¶ 24. If the Court does not issue an injunction to cease the Defendant's unlawful and unconstitutional behavior, individuals at Greystone are at risk of serious bodily harm. If left unchecked, this risk of harm will continue to erode the care received by patients at Greystone, which will continue to elevate the levels of assault, which will perpetuate this cycle ad infinitum. The relief sought is tailored to address this dangerous condition for the benefit of all interested parties. Moreover, currently, rather than fixing the life-threatening risks to patients and staff, the Administration is instead attempting to stop the truth from coming out by engaging in witness tampering, intimidation, and retaliation against staff. The Defendants are actively deceiving the courts and the public. Gotay Decl. at ¶ 16.

V. THE PUBLIC INTEREST WEIGHS HEAVILY IN FAVOR OF GRANTING THE REQUESTED INJUNCTION.

There is no public interest greater than the public interest to preserve lives. The testimony of Drs. Gormus (¶ 48), Bakun (¶ 68), Gotay (¶ 55), Mendoza (¶ 20),

Hill (¶ 29), and Dhaibar (¶ 25) make clear that as a direct result of the actions and omissions of the Greystone Administration, Plaintiffs and Greystone patients are at imminent risk of serious injury or death. For example, since the filing of the initial Complaint in this action in December 2018, at least one patient was prematurely taken off of one-to-one observation at great risk to her safety, and immediately thereafter nearly died when she broke off a radio antenna and swallowed it (Gormus Decl. at ¶ 24); a code cart was so inadequately stocked with necessary life-saving equipment that a patient had to have Narcan administered through the tube of the doctor's stethoscope, rather than an IV (Id. at 45l; see also Bakun Decl. at ¶¶ 46-47). Indeed, "as a direct result of the Administration's depraved indifference to human life, multiple people have died or faced life-threatening conditions, the majority of which are entirely foreseeable and preventable." (Bakun Decl. at ¶ 21). It is difficult to conceive of the public having a greater interest than that of protecting the lives and safety of some of its most vulnerable citizens.

Moreover, as set forth in Section I herein, the Defendants are engaged in an ongoing course of conduct that deprives Plaintiffs of their Constitutional rights. "It is always in the public interest to prevent the violation of a party's constitutional rights." Buck v. Stankovic, 485 F. Supp. 2d 576 (M.D. Pa. May 1, 2007) citing Gannett Co., Inc. v. DePasquale, 443 U.S. 368, 383, 99 S.Ct. 2898, 61 L.Ed.2d 608 (1979)). Where, as here, the Defendants have acted to deprive citizens of their rights

under the Fifth and Fourteenth Amendments, of the rights guaranteed to them by Section 202 of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act; and those grounded in the New Jersey Constitution, it is axiomatic that public interest will be advanced through the relief sought.

CONCLUSION

For the foregoing reasons, we respectfully request that the Court grant Plaintiffs' Motion for a Preliminary Injunction pursuant to Federal Rule of Civil Procedure 65 and enter the Order submitted herewith.

Respectfully submitted,

OFFICE OF THE PUBLIC DEFENDER – STATE OF NEW JERSEY
Attorneys for Plaintiffs

By: s/ Carl Herman
Joseph E. Krakora, Esq.
Carl J. Herman, Esq.,
Nora R. Locke, Esq.
Rihua Xu, Esq.
Eric J. Sarraga, Esq.
joseph.krakora@opd.nj.gov
carl.herman@opd.nj.gov
nora.locke@opd.nj.gov
rihua.xu@opd.nj.gov
eric.sarraga@opd.nj.gov

THE WOLF LAW FIRM, LLC
Attorneys for Plaintiffs

/s David J. DiSabato
David J. Disabato, Esq.
Lisa R. Bouckenooghe, Esq.
Andrew R. Wolf, Esq.
ddisabato@wolflawfirm.net
lbouckenooghe@wolflawfirm.net
awolf@wolflawfirm.net

Dated: June 13, 2019

JOSEPH E. KRAKORA, PUBLIC DEFENDER
OFFICE OF THE PUBLIC DEFENDER
DIVISION OF MENTAL HEALTH ADVOCACY
31 CLINTON STREET, 11TH FLOOR
NEWARK, NEW JERSEY 07102
973-648-3847
BY: RIHUA XU, ESQ.
ASSISTANT DEPUTY PUBLIC DEFENDER
Attorney ID No.: 122232014

J.M. et al., individually and on behalf of all other persons similarly situated,	UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY HON. ESTHER SALAS, U.S.D.J. HON. CATHY L. WALDOR, U.S.M.J.
Plaintiffs,	**CIVIL ACTION No.**: 2:18-cv-17303
v.	**DECLARATION IN SUPPORT OF PRELIMINARY INJUNCTION**
SHEREEF M. ELNAHAL, M.D., et al.	**Dr. Walter Bakun**
Defendants.	

I, Dr. Walter Bakun, of full age, hereby declare as follows under penalty of perjury pursuant to Section 1746 of Title 28 of the United States Code:

1. I am a medical doctor, licensed to practice in New Jersey, New York, and Pennsylvania.
2. I am Board Certified in emergency medicine.
3. In 1983, I graduated from St. George's University in Grenada with a medical degree.

4. In 1986, I completed my residency in internal medicine at Bergen Pines County Hospital in Paramus, New Jersey. As part of my residency, I also received emergency room training at Jersey City Medical Center and UMDNJ in Newark.
5. From 1986 to 1998, I worked as an emergency room physician at Barnert Hospital in Paterson, New Jersey.
6. From 1998 to 1999, I worked as an emergency room physician at Elizabeth General Medical Center.
7. From 1999 to 2004, I worked as a full-time physician at Robert Wood Johnson University Hospital in Rahway, New Jersey.
8. From 2003 to 2006, I worked as a part-time physician at the Center of Occupational Health, a subsidiary of St. Michael's Medical Center in Newark, New Jersey.
9. From 2005 to 2006, I worked as a part-time occupational health physician at Concerta, located throughout New Jersey.
10. From March 2003 to 2007, I worked as an emergency room physician at Pascack Valley Hospital in Westwood, New Jersey.
11. From March 2007 to present, I work as a full-time physician at Greystone Park Psychiatric Hospital (hereinafter "Greystone").
12. From November 2016 to June 2017, I was the Vice-President of the Medical Staff Organization at Greystone.

13. From July 2017 to present, I have been the President of the Medical Staff Organization at Greystone.
14. I am making this voluntary statement under oath and agree to testify in court at no benefit to myself and at the potential cost of my career. I have personal knowledge regarding every statement I make herein.
15. In October 2017, the Greystone Medical Staff Organization filed a "No Confidence Resolution" against the Greystone Administration due to its inability to properly operate Greystone. At the time, I was the President of the Medical Staff Organization.
16. The "No Confidence Resolution" addressed the many issues at Greystone, including: safety, staffing, and inadequate medical response, which resulted from the gross mismanagement by the Greystone Administration.
17. Since at least 2014, prior to the "No Confidence Resolution," we informed the Administration of these problems time after time, but our concerns have fallen on deaf ears. As a result, the Administration caused multiple doctors and psychiatrists to resign in a short period of time.
18. To this day, I have no confidence in the Greystone Administration and their ability to operate Greystone.

19. The conditions at Greystone are deplorable and inhumane. Plaintiffs and patients are neither receiving adequate medical nor psychiatric care.

20. The Greystone Administration treats patients like animals, not people. They continue to demonstrate that they do not care about patients' lives and safety.

21. As a direct result of the Administration's depraved indifference to human life, multiple people have died or faced life-threatening conditions, the majority of which are entirely foreseeable and preventable.

22. The Greystone Administration takes any measure to advance its own agenda. For example, this culture empowered one Greystone administrator to potentially allow a patient to bleed to death rather than permit the necessary medical intervention.

23. Under the current Greystone Administration's policies and procedures, Greystone patients will continue to die.

24. The Greystone Administration and Department of Health have acted in concert to destroy Greystone's standard of care.

25. The Greystone Administration is deliberately indifferent to the medical needs of its patients. As a result, Greystone patients, individuals who suffer from disabilities, are being denied appropriate medical care.

26. In 2017, the Greystone Administration and Department of Health diminished Greystone's standard of medical care by implementing a policy lowering the emergency response in life threatening situations from Advanced Cardiac Life Support to Basic Life Support.

27. Prior to this policy change, since 2008, Advanced Cardiac Life Support was the standard operating procedure at Greystone.

28. Since 2014, the Administration has been attempting to downgrade the standard of care for all staff, including medical doctors.

29. In my professional opinion, Basic Life Support is grossly insufficient to provide adequate medical care at Greystone.

30. Basic Life Support involves the mere use of basic CPR. Basic CPR cannot be used effectively to save the lives of the Greystone patients who are on dangerous medications, at risk of cardiac arrest, and confined in a hospital where violence and medication mismanagement is rampant.

31. The Administration does not care about Greystone's patients and instituted a policy requiring Basic Life Support to reduce their liability in dangerous life-threatening scenarios.

32. To support this policy, they have maintained that Advanced Cardiac Life Support is unnecessary, an opinion that is utterly reckless.

33. To enforce this policy and advance the Department of Health's Agenda, the Administration has intentionally ignored and downplayed the instances where patients' lives were saved by Advanced Cardiac Life Support.

34. There is a proven track record of saving lives at Greystone through Advanced Cardiac Life Support. I have personally saved the lives of patients that would have died, but for Advanced Cardiac Life Support.

35. On one occasion, I saved the life of a patient that was close to death. The patient could not breathe and I utilized an Advanced Airway, an Advanced Cardiac Life Support intervention, to save his life.

36. Since I have started working at Greystone, the Advanced Airway has saved more lives than any other intervention.

37. In response to this life saving measure, the Administration considered disciplining me for utilizing a modality of care beyond Basic Life Support. Without this Advanced Cardiac Life Support mechanism, this patient would likely have died.

38. Similarly, I saved another Greystone patient's life by placing an external jugular line and administering 50% dextrose IV for severe hypoglycemia. Had this not been done,

this patient could have died or survived with severe neurological damage.

39. On another occasion, I used Advanced Cardiac Life Support to save a patient's life who slit her wrist during the night as a suicide attempt. When she was discovered in the morning by staff, she was unresponsive, completely pale from blood loss, and her blood had seeped through her mattress and formed a pool on the floor. The member of the Greystone Administration, who was the first to arrive on the scene, did nothing but wait for the basic ambulance to arrive and continued to allow the patient to die. When I arrived and attempted to give life-saving aid, the Administrator physically obstructed my access to further the Administration's policy of Basic Life Support and non-intervention to avoid liability. I was told to "go away," "we don't need you." No one was doing anything to save this patient's life; no one was even in the room to stop the bleeding. I elected to advance past the Administrator who was obstructing the doorway and immediately identified that the patient was in stage 3 to stage 4 hemorrhagic shock and at imminent risk of death. I utilized Advanced Cardiac Life Support to save this patient's life. In my professional judgement, not only would it have been inhumane and reckless

for me to "just wait until the basic ambulance arrived," it would have likely cost this patient her life.

40. To implement the policy of Basic Life Support, the Greystone Administration dismantled the code carts by removing critical Advanced Cardiac Life Support mechanisms and instruments. The Administration also implemented the policy of not deploying the code carts until the responding doctor requests it, significantly limiting the opportunity during what is frequently a narrow window of time to administer lifesaving measures.

41. I have pleaded with the Greystone Administration time and again to automatically deploy the code carts during a code blue, where a patient's life is in imminent jeopardy. This would cost the Administration nothing. Instead, they threatened me with discipline to intimidate me into dropping the issue.

42. Not deploying the code cart immediately when a code blue is called is like not sending a firetruck with the firefighters to the scene of a fire.

43. The Greystone Administration has repeatedly minimized the importance of the code cart, despite the fact that code carts are integral to the universal standard of care across hospitals, emergency rooms, and paramedic response nationwide.

44. The failure of the Administration's policy of solely using Basic Life Support directly led to patient deaths.

45. For example, on at least two occasions, patients have died because the code cart did not arrive in time and the responding physician was unable to render effective aid.

46. On another occasion, a Greystone employee died while on duty because critical lifesaving equipment had been removed from the code carts.

47. On another occasion, a Greystone patient suffered cardiac arrest and died. There was no epinephrine in the code cart to restore his blood pressure and save his life. Epinephrine is a necessity in any adequately equipped code cart.

48. In yet another example, a Greystone patient died from a pulmonary embolus. His death could have been prevented with Advanced Cardiac Life Support.

49. The ambulance response time ranges anywhere from approximately 20 minutes to 1 hour, which is completely unacceptable and likely constitutes a fatal delay during a life-threatening emergency.

50. When coupled with our patient population that includes geriatric patients and other individuals with preexisting medical conditions, most of whom take psychiatric medications with significant inherent risks, Greystone's lack of care is unconscionable.

51. Statistically, we have a rough estimate of the Greystone population who will face a life-threatening emergency from the factors described above. Yet, knowing the risks, the Greystone Administration has elected to dismantle the standard of care necessary for doctors like myself to save them.

52. Moreover, the Greystone Administration and the Department of Health has continuously failed to maintain adequate staffing levels required to provide sufficient medical and psychiatric care to its patients.

53. The shortage of psychiatrists has directly caused patients to decompensate and become violent. Due to the Administration's policies, the staff is ill-equipped to deal with these dangers.

54. Rampant levels of assaults, unanswered all-available calls for help, drug overdoses, medication mismanagement, and psychiatric decompensation have become an every day occurrence at Greystone. The Greystone Administration's normalization of these occurrences is terrifying. To say that the violence problem currently at Greystone is serious is an understatement. Due to the astronomical rate of assault, doctors and psychiatrists are scared to even walk on the units.

55. Greystone has been historically overcrowded. I have seen patients sleeping on the floor of units that exceeded capacity. For example, I observed two geriatric female patients sleeping on the floor on one-inch floor mats, not mattresses, for four days. Patients were also placed in Greystone study rooms, small interview rooms, and corridors connecting the sister units when there are no beds available in the units.

56. Through the implementation of their policies, the Administration and Department of Health perpetuate these dangerous conditions.

57. The Greystone Administration has engaged in systemic fraud and deception to mislead regulatory agencies, courts, its staff, and the public.

58. The Greystone Administration conceals incriminating information and incidents that directly result from its own policies.

59. The Greystone Administration has also misrepresented that critical life-threatening conditions at Greystone have been fixed. For example, they represented that dangers above the Patient Information Center, where many patients remove the tiles and grab the suspended wires to attempt to asphyxiate themselves, have been secured.

60. After hearing this information, in front of witnesses, I opened the ceiling tiles myself, demonstrating that this was yet another lie.

61. The Administration's claim that the violence at Greystone is decreasing is another misrepresentation. While it may be true that the number of violent incidents decreased due to the lowered patient population, the problems causing the culture of violence have not been addressed at all. Violence per capita remains consistent, as would be evident to any professional who works at Greystone. As soon as Greystone resumes regular admissions, it is in my professional opinion that the number of violent incidents will skyrocket.

62. Furthermore, the Greystone Administration and Department of Health fails to provide adequate lifesaving training to the Greystone staff, but fraudulently represents that they do.

63. For example, the Greystone Administration has held CPR training courses where it does not provide training scenarios, but merely provide the attendees passing certifications.

64. Similarly, the Administration fraudulently forced the doctors to sign and attest to a log-rolling training that doctors had yet to receive. Additionally, numerous employees, myself included, were ordered to sign and attest that we have received the training, even though we did not.

65. The Greystone Administration intimidates and retaliates against the staff that question their policies or speak out against them.

66. In March 2018, the Greystone Administration and Department of Health suspended me as a form of retaliation for my outspoken views and criticism of their policies. The Greystone Administration circumvented the Medical Staff Bylaws to suspend me. The committee reviewing the suspension concluded that there was no justification for the suspension. Instead, it was pretextual. Additionally, the Administration caused multiple doctors and psychiatrists to resign in a short period of time.

67. As a result of the aforementioned, the Medical Staff Organization filed a grievance in which we requested that Greystone units be closed and admissions cease until the escalating violence is addressed and an adequate standard of care is restored.

68. If the current policies and procedures remain, it is my professional opinion that people will die. It would be a statistical anomaly if the Greystone Administration and the Department of Health's policies and procedures do not kill another individual in the near and foreseeable future.

69. The above in no way encompasses the totality of egregious circumstances that have transpired at Greystone. I am

willing to testify before the Court in full detail, should it permit.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

s/ Walter M. Bakun
Dr. Walter M. Bakun, MD

Executed on: June 12, 2019

JOSEPH E. KRAKORA, PUBLIC DEFENDER
OFFICE OF THE PUBLIC DEFENDER
DIVISION OF MENTAL HEALTH ADVOCACY
31 CLINTON STREET, 11TH FLOOR
NEWARK, NEW JERSEY 07102
973-648-3847
BY: RIHUA XU, ESQ.
ASSISTANT DEPUTY PUBLIC DEFENDER
Attorney ID No.: 122232014

J.M. et al., individually and on behalf of all other persons similarly situated,	UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY HON. ESTHER SALAS, U.S.D.J. HON. CATHY L. WALDOR, U.S.M.J.
Plaintiffs,	**CIVIL ACTION No.**: 2:18-cv-17303
v.	**DECLARATION IN SUPPORT OF PRELIMINARY INJUNCTION**
SHEREEF M. ELNAHAL, M.D., et al.	**Dr. Anthony Gotay**
Defendants.	

I, Dr. Anthony Gotay, of full age, hereby declare as follows under penalty of perjury pursuant to Section 1746 of Title 28 of the United States Code:

1. I am a clinical psychiatrist, licensed to practice in the State of New Jersey.
2. In 2007, I graduated from UMDNJ in Newark, NJ with Doctor of Medicine Degree.
3. In 2014, I completed my residency in psychiatry at Harvard South Shore, Brockton VA Hospital.

4. From July 2014 to March 2015, I was the Medical Director of the Outpatient Substance Abuse Program at Trinitas Medical Center, in Elizabeth, NJ.
5. From March 2015 to March 2017, I worked at the East Orange VA Hospital as a staff psychiatrist.
6. From March 2017 to present, I work as a full-time staff psychiatrist at Greystone Park Psychiatric Hospital ("Greystone").
7. On or around July 2017, I was appointed the Vice-President of the Medical Staff Organization at Greystone, a position I continue to hold, but for a period in 2018 where I served as the Acting-President.
8. I am making this voluntary statement under oath and agree to testify in court at no benefit to myself and at the potential cost of my career. I have personal knowledge regarding every statement I make herein.
9. It is not a question of "if" another patient will die a completely preventable death in the near foreseeable future at Greystone, it is a question of "when."
10. Many patients are not receiving the appropriate standard of care.
11. Patients do not receive adequate psychiatric care at Greystone; some patients barely receive any care at all.

12. There is a significant shortage of competent doctors, nurses, and mental health technicians currently working at Greystone.

13. Entire units at Greystone currently do not have assigned treating psychiatrists. Patients, especially in units not covered by a full-time psychiatrist, decompensate due to the lack of clinical care and proper medication titration.

14. Even patients in units with a full-time covering psychiatrist are being harmed. Some psychiatrists, completely overworked by the Greystone Administration, have reported overmedicating or undermedicating patients that have directly resulted in health consequences for those patients and others. Our repeated pleas for assistance to the Greystone Administration is futile.

15. Patients are being physically assaulted by psychiatrically decompensated patients to the point where they can be killed. Numerous assaults of all kinds occur daily.

16. The Greystone Administration is deliberately indifferent to the safety and well-being of patients under its care.

17. The Administration has engaged in an orchestrated course of conduct of mafioso-like behavior to intimidate staff into silence, consolidate power, and to keep the status-quo.

18. As a direct result of the Greystone Administration's actions and policies, patients and staff members are at risk of imminent bodily harm or death every single day.

19. This Court is our last hope for intervention, because the Greystone Administration have demonstrated time and again that they will lie, threaten, and retaliate in the face of these life-threatening conditions. If drastic changes do not come in the immediate future, it is my professional judgement that more patients will be seriously harmed.

20. Since I began working at Greystone at March 2017, I, along with my colleagues, repeatedly and insistently notified the Greystone Administration regarding what we collectively believe to be a dire deficiency in safety, staffing, and the standard of care provided for patients at Greystone.

21. I, along with my colleagues, in no uncertain terms expressed to the Administration that if these conditions persisted, patients will be seriously hurt or die.

22. Tragically, our predictions were correct; many preventable serious bodily injuries to patients have occurred in just the last year alone.

23. I quickly realized that despite our best efforts, the problems surrounding preventable patient decompensation, overdosing, suicide attempts, assaults, and lack of standard

of care were being intentionally ignored by the Administration.

24. Rather than remediation, the Administration continued its systematic retaliation against the doctors, including myself, who spoke out against the unconscionable conditions patients are being subjected to.

25. The Greystone Administration has, and continues to, actively deceive the public, the courts, and even its own employees regarding the conditions at the hospital.

26. I repeatedly and insistently told the Greystone Administration that patients are psychiatrically decompensating because there are not enough psychiatrists and other necessary employees.

27. I repeatedly and insistently told the Greystone Administration that patients are being assaulted by other decompensated patients, and that the Greystone Administration's policies and procedures are directly causing the inability to ensure a basic level of safety for patients.

28. I repeatedly and insistently told the Greystone Administration that illegal narcotics are being bought into the hospital, and patients are overdosing on these illegal drugs.

29. I repeatedly and insistently told the Greystone Administration that the physical infrastructure in Greystone is extremely unsafe, are conducive to staff and patient assaults and preventable suicide attempts.

30. I repeatedly and insistently told the Greystone Administration that the patient load they currently assign me render me unable to give an adequate standard of care to my patients.

31. My concerns are repeatedly dismissed.

32. We had filed union grievances, votes of no confidence, written petitions, and other oral and written submissions to the Greystone Administration demanding change. We voluntarily testified before the Greystone Board of Trustees regarding the conditions.

33. No meaningful changes were made prior to the filing of the Public Defender's class action litigation. The only change resulting from the filing of the litigation has been a reduction in admissions, and therefore, the patient population. The dangerous, overcrowded conditions were previously ignored by the Greystone Administration for years.

34. Dr. Bakun is the President of the Medical Staff Organization. He is also very vocal regarding the deplorable conditions patients suffer at Greystone Hospital. In a brief period in

2018, he was placed on leave by the Greystone Administration on what was universally perceived to be a transparent and pretextual basis to silence him and send a message to the other doctors.

35. I was appointed as the head of the Ad Hoc Committee to determine whether the allegations against Dr. Bakun were substantiated. It was intimated to me by the Greystone Administration to substantiate the Administration's allegations against Dr. Bakun. The Administer subsequently attempted to violate the Greystone Bylaws and influence the process. I refused to give into their coercion.

36. I refused to engage in their conspiracy, and I refused to keep silent regarding the ongoing conditions at Greystone Hospital and the systematic coverup by the Administration. I believed I was given an "overload" of cases as retaliation.

37. When I was the Acting-President of the MSO (Due to Dr. Bakun's involuntary leave) I was bombarded with over double the caseload of what the average staff-psychiatrist was assigned. This is in direct violation of Greystone's Bylaws, which hold that the President, due to the need to conduct managerial duties, can only be assigned half the caseload of a regular staff-psychiatrist.

38. It was made clear to me by the Greystone Administration's threats as to their intention to retaliate against me. For

example, I was threatened with discipline for "not completing" the work of the MSO even though the Administration knew I was covering 4 times the patient load that the MSO president should cover.

39. Since 2018, the staff-psychiatrists have been instructed on numerous occasions by the Greystone Administration to intentionally conceal from the courts our lack of knowledge regarding patients during testimony. I was present during numerous meetings where we were explicitly told not to tell the court that we are "covering psychiatrists," that we didn't spend enough time with patients, or that we did not have an adequate basis of knowledge to testify.

40. The Greystone Administration is much more concerned with controlling its public façade and avoiding personal accountability than actually understanding and meeting the basic needs of its patients.

41. For example, the Greystone Administration seemingly have no understanding or do not care that depending on the different levels of acuity in patients, they require very different needs and supervision.

42. In 2017, I, along with my colleagues, submitted a time study based on what we clinically determined to be the minimum ratio of psychiatrists-patients that would give us barely

enough time to meet a minimum standard of care. That, too, was completely ignored.

43. It is critical that patients on psychiatric medication are given regular blood toxicity monitoring and Abnormal Involuntary Movement Scale Testing ("AIMS"). Failure to conduct regular blood toxicity monitoring can lead to serious health consequences, including death. Failure to regularly conduct AIMS testing can lead to severe tardive dyskinesia for life, even if the medication is discontinued.

44. Lapses in testing or monitoring are a frequent occurrence, due to the Greystone Administration's failure to provide enough staffing. Recently, the Quality Assurance Committee had found that the prevalence of lapses in testing is directly correlated with units without assigned permanent psychiatrists.

45. In just the recent months, there were multiple instances where decompensated patients went on assaultive rampages, destroying property and assaulting other patients and staff. When calls for "all-available help" were made, there were no psychiatrists available to respond (Dr. Akerele almost always refuses to respond, despite being present at the hospital). As a result, patients were allowed to continue their decompensated rampages because psychiatrists were not

present to deescalate the patient, administer medication, or order seclusion or restraint.

46. In one recent instance, my patient on Unit D2 clinically decompensated and was assaultive and destroying property. I was not at work that day and timely notified the Greystone Administration. However, the Administration did not order another psychiatrist to cover my unit. Coupled with the crippling psychiatrist shortage, no psychiatrist came to the unit to assist, even when numerous all-available calls for help were made. This patient continued the episode of psychiatrically decompensated destruction unchecked for over 4 hours, harming himself, others, and staff.

47. There have been multiple preventable suicide attempts in the last several months, including an instance where a patient attempted to hang herself by standing on the Patient Information Center, pulling down the wires, and wrapping it around her neck. This is despite the false claims the Greystone Administration has made that these conditions had already been remedied.

48. We are frequently pressured by the Greystone Administration to take patients off one-to-one prematurely. The Greystone Administration seems to have no concern regarding the patients when coming to its decision of whether to keep a patient on one-to-one. Rather, they are more concerned about

the number of one-to-one staffing concurrently deployed. In my experience, when the number of one-to-one staffing exceeds 20, the Administration's policy is to force doctors to discontinue one-to-one observation, no matter the risks involved.

49. Recently, the Greystone Administration discontinued a one-to-one for my patient already set to be transferred to Ann Klein Forensic Center due to his assaultive behavior. My adamant protest fell on deaf years. Almost immediately, the patient attempted to elope from the hospital. The police were called. The patient assaulted the police officers, putting himself and others at dire risk of harm.

50. At Greystone, we frequently prescribe medications that can cause metabolic syndromes. Metabolic syndromes are a cluster of conditions that can lead to heart attack, stroke, and diabetes. We have geriatric patients, and many patients with significant preexisting conditions. Therefore, it is inconceivable that the Greystone Administration is systematically downgrading the standard of emergency medical care to its patients, especially because the ambulance response time to and from Greystone is notoriously poor. With the inherent risks of medication and this patient population, Greystone's downgrading of its emergency care from supporting Advanced Cardiac Life Support to Basic Life

Support is just another example demonstrating a depraved indifference to human life.

51. Currently, the conditions at Greystone are so dangerous that psychiatrists and other staff do not feel safe to conduct basic interactions with patients in order to appropriately assess their psychiatric condition, titrate their medication, and keep them reasonably informed regarding their treatment.

52. The Greystone Administration has recently escalated its campaign of misinformation; rather than just promising changes that never come, the Administration is now lying to its staff by stating that critical changes have already been made, despite this being obviously false.

53. These lies are absurd to the point of laughable if human lives weren't at risk; for example, the Greystone Administration recently represented to staff doctors and a mediator during a grievance hearing that critical infrastructure fixes were made, dangerous furniture were replaced, staff levels are up, and assault levels are down. The lies by the Greystone Administration were not only outrageous, it was made to the very doctors who work on the purportedly "fixed" units every day.

54. In short, the policies and procedures implemented by the Greystone Administration has rendered us unable to do our

jobs that would adequately satisfy our patients' needs at even a basic level.

55. The Greystone Administration has failed to administer the appropriate standard of care for its patients. As a direct result of their actions and omissions, patients have been seriously hurt. The risk of patient mortality is currently imminent and dire.

56. The above in no way encompasses the totality of egregious circumstances that have transpired at Greystone. I am willing to testify before the Court in full detail, should it permit.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

/s Anthony Gotay
Dr. Anthony Gotay, MD

Executed on: June 12, 2019

JOSEPH E. KRAKORA, PUBLIC DEFENDER
OFFICE OF THE PUBLIC DEFENDER
DIVISION OF MENTAL HEALTH ADVOCACY
31 CLINTON STREET, 11TH FLOOR
NEWARK, NEW JERSEY 07102
973-648-3847
BY: RIHUA XU, ESQ.
ASSISTANT DEPUTY PUBLIC DEFENDER
Attorney ID No.: 122232014

J.M. et al., individually and on behalf of all other persons similarly situated,	UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY HON. ESTHER SALAS, U.S.D.J. HON. CATHY L. WALDOR, U.S.M.J.
Plaintiffs,	**CIVIL ACTION No.**: 2:18-cv-17303
v.	**DECLARATION IN SUPPORT OF PRELIMINARY INJUNCTION**
SHEREEF M. ELNAHAL, M.D., et al.	**Dr. Margarita Gormus**
Defendants.	

I, Dr. Margarita Gormus, of full age, hereby declare as follows under penalty of perjury pursuant to Section 1746 of Title 28 of the United States Code:

1. I am a clinical psychiatrist, licensed to practice in the State of New Jersey.
2. In 2009, I completed my residency in psychiatry at Bergen Regional Medical Center in Paramus, NJ.
3. In 2010, I completed a one-year fellowship in psychosomatic medicine.

4. From 2010 to 2013, I worked as a staff psychiatrist at St. Clare's Hospital in Boonton, NJ.
5. From 2013 to 2014, I was employed as a staff psychiatrist at Newton Hospital.
6. From 2014 to present, I worked as a full-time staff psychiatrist at Greystone Park Psychiatric Hospital (hereinafter "Greystone").
7. From April 2018 to August 2018, I served as the Chief of Psychiatry at Greystone Hospital.
8. I am making this voluntary statement under oath and agree to testify in court at no benefit to myself and at the potential cost of my career. I have personal knowledge regarding every statement I make herein.
9. Since 2014, conditions at Greystone have been rapidly deteriorating. The Greystone Administration has systematically destroyed the standard of care for patients at Greystone.
10. The best way to describe how things currently are is that the Administration has turned Greystone more into a zoo than a hospital.
11. The conditions patients are forced to endure daily are not suitable for human beings.

12. Patients psychiatrically decompensate at an unprecedented rate. Entire units are filled with patients who have decompensated due to the lack of psychiatric coverage.
13. Safety is nonexistent for patients and staff alike.
14. The standard of care patients receive is disastrous.
15. Greystone is currently grossly mismanaged, and the Administration shows an intentional disregard for the safety and well-being of its patients.
16. Rather than fixing the life-threatening risks to patients and staff, the Administration is instead attempting to stop the truth from coming out by engaging in witness tampering, intimidation, and retaliation against staff. The Administration is actively deceiving the courts and the public.
17. I voluntarily resigned from the position of Chief of Psychiatry after only 4 months in 2018 because the Greystone Administration often asked me to do things that were illegal, contrary to the Greystone Bylaws, and downright dangerous to patients.
18. I quickly realized upon accepting the position that the Greystone Administration wanted to use me as a pawn, and to get me to do their dirty work, such as their schemes to retaliate against doctors who were speaking out against the conditions in the hospital.

19. For instance, the Greystone Administration tried to force me to assign a massive caseload to Dr. Gotay when he was the Acting President of the Medical Staff Organization. Dr. Gotay was specifically targeted for retaliation by the Administration. I refused because I knew what the Administration was doing was morally wrong and illegal. I did not want to participate. The reason I told the Administration for my refusal is that the Bylaws state that the Medical Staff Organization President can only have half the caseload of a staff psychiatrist. I asked the Administration to reconsider its position. In response, the Administration took control of case assignments away from me and gave Dr. Gotay an untenable amount of work without my approval.

20. This type of "case dumping" and "overloading" behavior directly causes extremely dangerous and untherapeutic conditions for patients- the Greystone Administration was not only aware of this, but this was part of their retaliation.

21. Retaliation happened routinely against psychiatrists, for even perceived dissention. As the Chief of Psychiatrist, when I confronted the Administration about the need to stop "pushing doctors out," I was told, "don't worry, even if all of them leave, Greystone will stay open."

22. In or around May 2018, Dr. Gaviola was viciously assaulted and an emergency meeting was scheduled. At the meeting, a member of the Administration said that it was Dr. Gaviola's "fault that he got punched in the face by a patient because he should have known not to stand so close to him."

23. The Administration also showed slides inaccurately depicting that violence at Greystone had decreased. When a staff psychiatrist pointed out the obviously inaccurate information during the meeting, he was punished.

24. The Greystone Administration also forced me to prematurely take patients off one-to-one observation. In one recent instance, despite my repeated begging, the Greystone Administration stopped the one-to-one observation of a decompensated patient acutely suffering from pica, a disorder characterized by a compulsive ingestion of non-edible substances, such as sharp objects, metal, stone, and feces. The Administration did not even bother to place the patient on intermittent observation or ask the unit nurses to pay close attention to her. As a result, shortly after the patient was discontinued from one-to-one, she broke off a radio antenna and swallowed it. The patient almost expired, and likely will have health consequences for the rest of her life. When the patient was in surgery, a member of the Greystone Administration retroactively put in

paperwork into the chart, clinically justifying the discontinuation.

25. The Greystone Administration also forced me to discharge dangerous patients, some of whom were not clinically ready to leave the hospital. It became apparent that the Administration valued me for my signature as the Chief of Psychiatry, not my actual professional or clinical judgement.

26. During my tenure as Chief of Psychiatry, I attempted to address the safety concerns at Greystone, but was actively prevented to do so by the Administration. On or around May 2018, the hospital was down to as few as 6 psychiatrists and approximately 7 units were without covering psychiatrists. (As a general rule, if any psychiatric unit does not have an assigned psychiatrist for approximately 30 days, the entire patient population of the unit will become psychiatrically decompensated.) The rate of psychiatric decompensation was so high it was more akin to something one would see in an inaccurately depicted movie rather than the reality of a modern hospital. I believed that if I didn't act soon, patients would die. Therefore, I called for an emergency meeting with the psychiatrists to address the issues, as was within the scope of my responsibilities as the Chief. However, the Administration cancelled the meeting, told me

"You do not know what you are doing," "there is no emergency," "there is no shortage of psychiatrists," and that I was "creating a panic and being a drama queen." At this point, the Administration permanently took away my responsibility of assigning cases to doctors.

27. When I resigned as Chief of Psychiatry, I left a letter of resignation detailing the problems, and openly protested the Greystone Administration's conduct, and that it jeopardizes the lives of the patients. The retaliation then began against me. I am currently assigned approximately 47 forensic patients, which is easily double the average caseload. Furthermore, forensic patients are the most difficult, dangerous, and time-consuming cases, due to their acuity.

28. I currently cannot meet an adequate standard of care for my patients. This is not just the product of the Greystone Administration's neglect- this is their intended consequence. The only reason I have not yet resigned is because I know things will get even worse for the patients if I leave.

29. Recently, I was assigned to a high-profile patient that no other doctor wanted. The case had a lot of media attention, and it was a perceived source of embarrassment to the

Greystone Administration regarding how the case had been handled previous to my assignment.

30. On or around November 2018, shortly after I became the primary treating psychiatrist for this patient, Deputy Attorney General Swang Oo began to arrange "special meetings" with me. The subject of these meetings was to coerce me to testify that the patient was psychotic and dangerous. In my professional judgement, the patient was not. At these meetings, Ms. Oo tried to put words in my mouth and made clinical conclusions regarding the patient. However, I repeatedly told Ms. Oo that I would only tell the truth in court and maintained my opinion.

31. In response, Ms. Oo contacted Dr. Feibusch, my direct supervisor at the time.

32. I wrote my first expert report for this patient near the end of November 2018, in anticipation of testimony. Expert reports, as I view them, are submissions I make to the court that must be truthful under the penalty of perjury.

33. On or around December of 2018, as we are mandated to do, I forwarded the report to Arlington King, the court liaison. Mr. King forwarded the report to Ms. Oo and the Greystone Administration.

34. On or around December 10, 2018, Eric Madurki, Deputy CEO, called me and told me directly that I "must change" the

report to reflect that the patient is "psychotic and dangerous." When I refused to change the report, Mr. Madurki responded "okay, we will change the report for you."

35. On or around December 11, 2018, I was scheduled to testify at the patient's hearing. However, prior to the hearing, an edited report was sent to me by Mr. King. More specifically, I realized that material portions of my original report were altered, including the portions indicating that I met with Ms. Oo regarding the patient. All references to Ms. Oo's involvement were deleted. After realizing this, I printed out my original report, but was unable to testify because the hearing was adjourned.

36. I confronted Mr. King about the edited report and he stated that Ms. Oo and the Administration edited the report.

37. On or around January 2019, I was ordered to participate in a teleconference with Ms. Oo, Mr. King, Lisa Ciaston, and Dr. Feibusch. The purpose of the teleconference was to intimidate me. I was specifically instructed that I had to "prove that [the patient] is psychotic right now." I maintained my objections and stated that I will only tell the truth. I stated that I am not a forensic psychiatrist and I asked Dr. Feibusch, who is a forensic psychiatrist, to evaluate the patient and testify himself. In response, Dr. Feibusch again instructed me that I must testify and must

"prove" that the patient is psychotic. Additionally, Ms. Ciaston told me that "anyone can do this," and that I do not "have to be a forensic psychiatrist," but instead, "must listen to my superiors." There were veiled threats throughout the entirety of this teleconference, similar to the other meetings.

38. In or around January 2019, I drafted my second report for the patient and submitted it on Saturday prior to the court hearing. In my report, I stated that my supervisor gave me advice for my opinion.

39. On Monday, the day before the hearing, I received a call from Mr. King, who stated, "you know why I'm calling, they're asking me to get you to change the court report." I refused to change my report and stated that the Administration did not have permission to change it. On the day of the hearing, I called out sick because the intimidation, stress, and retaliation became too much for me to handle. The hearing was rescheduled for the third time.

40. For my third court report, Dr. Feibusch ordered me once again to "prove that [patient] is dangerous" and to testify that he is "psychotic."

41. At the hearing and during my testimony, the patient's attorney asked me if I was pressured to testify in a certain way or if I was pressured to change my opinion in my report.

I immediately broke down and asked for a ten-minute recess, because I knew that if I told the truth, I would be retaliated against worse than I had already been.

42. Although Dr. Feibusch repeatedly ordered me to conclude that the patient is psychotic and dangerous, to the best of my knowledge, he never evaluated or even met the patient prior to the last court date.

43. The hospital continues to be an absolute disaster where there is rampant chaos. Just recently, a patient set his mattress on fire in my unit in an attempt to burn down the hospital. If a staff member had not walked by when he did, there could have been a catastrophic loss of life. It is commonly known that there is inadequate fire insulation between the units of the hospital.

44. All-available calls for help are made multiple times a day, and assaults continue unabated. Patients often continue decompensated assaults for hours before a successful intervention.

45. Overdoses and drug abuse are steadily increasing within the patient population. Recently, I had to run a "code blue" because I was the first doctor on the scene to a patient who overdosed on heroin. The code cart arrived before the medical doctor. In overdose situations, time is of the essence. I attempted to administer Narcan, but quickly

realized that basic supplies, such as an IV, was missing from the code cart. To save this patient's life, I had to improvise. Having no other options, I ran the Narcan through the tube of a stethoscope.

46. The problems surrounding preventable patient decompensation, overdosing, suicide attempts, assaults, and lack of standard of care are being intentionally and nefariously ignored by the Administration.

47. The Greystone Administration has failed to administer the appropriate standard of care for its patients. As a direct result of their actions and omissions, patients have died and have been seriously hurt. The risk of patient mortality is currently imminent and dire.

48. The above in no way encompass the totality of events or circumstances that have recently transpired. Through agreeing to voluntarily testify, I am seeking relief from this Court that patients' lives currently imperiled may be saved.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

s/ Margarita Gormus
Dr. Margarita Gormus, MD

Executed: June 12, 2019

JOSEPH E. KRAKORA, PUBLIC DEFENDER
OFFICE OF THE PUBLIC DEFENDER
DIVISION OF MENTAL HEALTH ADVOCACY
31 CLINTON STREET, 11TH FLOOR
NEWARK, NEW JERSEY 07102
973-648-3847
BY: RIHUA XU, ESQ.
ASSISTANT DEPUTY PUBLIC DEFENDER
Attorney ID No.: 122232014

J.M. et al., individually and on behalf of all other persons similarly situated,	UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY HON. ESTHER SALAS, U.S.D.J. HON. CATHY L. WALDOR, U.S.M.J.
Plaintiffs,	**CIVIL ACTION No.**: 2:18-cv-17303
v.	**DECLARATION IN SUPPORT OF PRELIMINARY INJUNCTION**
SHEREEF M. ELNAHAL, M.D., et al.	**Dr. Yeshuschandra Dhaibar**
Defendants.	

I, Dr. Yeshuschandra Dhaibar, of full age, hereby declare as follows under penalty of perjury pursuant to Section 1746 of Title 28 of the United States Code:

1. I am a clinical psychiatrist, licensed to practice in the State of New Jersey.
2. I have been practicing for over forty years, and I am board certified in the field of psychiatry.
3. From 2014 to present, I work as a full-time staff psychiatrist at Greystone Park Psychiatric Hospital

(hereinafter "Greystone"). Between 2014-2016, I was the Chief of Psychiatry at Greystone.

4. I am making this voluntary statement under oath and agree to testify in court at no benefit to myself and at the potential cost of my career. I have personal knowledge regarding every statement I make herein.

5. When I was the Chief of Psychiatry, it became very apparent to me that the standard of care patients received was in rapid decline.

6. This decline was accelerated by many factors, including the closures of other state hospitals. Seemingly overnight, Greystone was the recipient of a huge influx of developmentally disabled patients and geriatric patients. Greystone is not and had never been equipped to treat these two populations.

7. Greystone's standard of care was neither designed to offer adequate care to developmentally disabled patients, nor designed to house geriatric patients. It is not a question of whether the standard of care can be met for these two populations- the modality of care of an inpatient psychiatric unit is not the appropriate standard of care for these respective patient populations, who require particularized therapy and housing.

8. When I was the Chief of Psychiatry, I recognized that that the conditions at the hospital were rapidly deteriorating. Problems surrounding increased violence and decreased staffing were not being addressed.

9. I reported these problems to the Greystone Administration, and insisted that changes be made. I was explicit and stated in no uncertain terms that something had to be done, or patients will continue to suffer. As a result, the Greystone Administration retaliated against me and removed me as the Chief of Psychiatry.

10. Since my removal as the Chief of Psychiatry to present, there has been a mass exodus of psychiatrists, due to the Greystone Administration's systematic eroding of the standard of patient care, not providing adequate support and understanding, and creating an atmosphere of intimidation and retaliation. All the while, violence continued to climb unabated. Out of fear and retaliation, psychiatrists could not render an adequate standard of care under these difficult and trying circumstances.

11. The Greystone Administration had paid lip service for years that things will change- nothing effective and substantial enough had been accomplished.

12. Greystone is currently critically understaffed. There are not enough nurses, mental health technicians, or

psychiatrists. The understaffing is a major factor contributing to Greystone's inability to meet the minimum standard of care for its psychiatric patients.

13. Units routinely lack assigned psychiatrists. The remaining psychiatrists who provide coverage to these units are forced to provide emergent care and to put out fires, rather than providing routine patient care. This coverage is in addition to our primary assigned units. Lapses in coverage are common. This arrangement is not sustainable and erodes and diminishes the standard of care.

14. Patients need to be adequately monitored and cared for to meet a basic standard of care. At a minimum, there needs to be consistent medication management, consistent blood work monitoring, consistent psychiatric care, and consistent nursing care. As a result of the Greystone Administration's purposeful conduct, these standards cannot adequately be met.

15. Currently, there is neither consistent nor continuous psychiatric and nursing care, preventing patients from receiving proper treatment. There is no adequate treatment plan for patients, because there is not adequate staffing to carry out the basic functions of a psychiatric hospital.

16. Greystone does not have an Electronic Health Record system, which creates a greater propensity of various errors.

17. Because of the Greystone Administration's policies and procedures, patient care is currently being administered in a haphazard, random, and inconsistent manner.

18. If appropriate treatment is chronically not rendered, there is no therapeutic alliance, and patients inevitably psychiatrically decompensate. This directly causes violence.

19. The psychiatric staff has constantly complained to the Greystone Administration time and again regarding these extreme problems. The Administration continues to do nothing. Despite its false representations, it has not even made the cost-efficient fix of suspending the computer wires above the ceiling tiles to prevent a common method of suicide attempt that has occurred dozens of times in the preceding years alone. Weeks after the Administration's representation that this problem has been fixed, we discovered this to be untrue.

20. The Administration continues to force doctors to take patients prematurely off one-to-one, despite conducting no real clinical review. This is dangerous and reckless, as the consequences have evidenced.

21. The Greystone Administration's deliberate incompetence is causing imminent risk of death and serious bodily harm for its patients.

22. Since the filing of the law suit, there have been a dramatic reduction in admissions. However, the various other issues responsible for causing violence have not adequately been addressed.

23. Though the lower Greystone Administrators will most likely take the brunt of the blame, it is clear to me the direction for the Administration's malfeasance comes from high in the State's chain of command. This cycle of behavior consisting of retaliation and chronic mismanagement have been ongoing for years. Despite different CEOs and other local administrators, the Administration's standard operating procedure remains steady. I cannot fathom that this pattern of wrongdoing comes from these individual actors alone.

24. I have had multiple job offers, including a job offer as a medical director for a county hospital for more pay, but I turned it down because I could not in good conscience leave Greystone in its current state. Numerous excellent doctors have left already, and I believe that if I leave now, things will become even worse for the patients and the remaining doctors.

25. Despite this, staff psychiatrists have reached a level of absolute desperation. I am absolutely desperate for change from the Administration. Without immediate change, people will die.

26. The above in no way encompass the totality of egregious circumstances that have transpired at Greystone. I am willing to testify before the Court in full detail, should it permit.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

s/ Yeshuschandra Dhaibar
Dr. Yeshuschandra Dhaibar, MD

Executed: June 12, 2019

JOSEPH E. KRAKORA, PUBLIC DEFENDER
OFFICE OF THE PUBLIC DEFENDER
DIVISION OF MENTAL HEALTH ADVOCACY
31 CLINTON STREET, 11TH FLOOR
NEWARK, NEW JERSEY 07102
973-648-3847
BY: RIHUA XU, ESQ.
ASSISTANT DEPUTY PUBLIC DEFENDER
Attorney ID No.: 122232014

J.M. et al., individually and on behalf of all other persons similarly situated,	UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY HON. ESTHER SALAS, U.S.D.J. HON. CATHY L. WALDOR, U.S.M.J.
Plaintiffs,	**CIVIL ACTION No.**: 2:18-cv-17303
v.	**DECLARATION IN SUPPORT OF PRELIMINARY INJUNCTION**
SHEREEF M. ELNAHAL, M.D., et al.	**Dr. Danijela-Ivelja Hill**
Defendants.	

I, Dr. Danijela-Ivelja Hill, of full age, hereby declare as follows under penalty of perjury pursuant to Section 1746 of Title 28 of the United States Code:

1. I am a clinical psychiatrist, licensed to practice in the State of New Jersey.
2. From 2012 – 2017, I worked as a clinical psychiatrist at Rutgers University Behavioral Health.
3. From April 2017- May 2018, I worked as a staff psychiatrist at Greystone.

4. I am making this voluntary statement under oath and agree to testify in court at no benefit to myself. I have personal knowledge regarding every statement I make herein.

5. Since I began working at Greystone, I became extremely concerned about the safety for patients and staff. I was vocal to the Greystone Administration from the outset regarding the need for change to prevent patient deaths and serious bodily injury.

6. It became immediately apparent to me that the Greystone Administration failed to maintain a basic standard of care for its patients.

7. Units are not properly designed to prevent foreseeable tragedies. The Patient Information Center is structurally designed in a way that is a hotbed for assaults and suicide attempts.

8. Patients frequently tried to hang themselves. I witnessed it myself on multiple occasions.

9. I also witnessed staff members retreating and barricading themselves into the chart room because of violent patients jumping over the Patient Information Center. Staff were often too scared to deescalate or physically contain assaultive patients. Instead, violent patients freely continue assaulting other patients and destroying property until help arrived, sometimes much later.

10. Patients routinely escaped the hospital by kicking open the security doors.

11. I was extremely vocal regarding the need for increased staffing for doctors, nurses, and mental health technicians. I informed the Administration regarding the necessary changes every chance I had.

12. Rather than increasing staffing, the Administration repeatedly decreased the amount of active staffing, including doctors and nurses.

13. On or around May 7, 2018, there was only 1 nurse on duty in the Borderline Personality Unit where I worked, which was designated for caring for individuals that can be relatively volatile. I informed the Administration that this was a tragedy waiting to happen, as I was actively managing no less than 5 patients in psychiatric crisis. The Administration refused to send help. A patient crossed the Patient Information Center, assaulted me, and shattered my knee.

14. The Administration not only ignored my injury, but made up stories about me, and attempted to intimidate me to remain silent regarding the unsafe conditions by threatening me, humiliating me, and overworking me.

15. Patients were routinely psychiatrically undermedicated or overmedicated due to the lack of time. Mismedication often results in decompensation for the patient.
16. Patients routinely self-harmed, left screaming to themselves, banged their heads on the floor or against the walls, engaged in assaultive behavior, and needed to be held down. Major incidents occurred constantly.
17. Entire psychiatric units were not covered by psychiatrists, who were all overworked. 4 out of the 6 admissions units, where the patients were acute and psychiatrically unstable, had no covering psychiatrist.
18. Half the units at Greystone had no covering psychiatrist.
19. Due to the lack of appropriate medication monitoring, psychiatrists were limited by the Greystone Administration regarding the type of psychiatric medication we were allowed to prescribe. This prevented psychiatrists from properly medicating certain patients who required these medications to properly stabilize.
20. We were specifically instructed by the Greystone Administration to not prescribe the psychiatric medications which would require the most blood monitoring. Those medications, however, are oftentimes the most effective and appropriate medications to administer.

21. The restraint protocol was woefully inadequate, as patients have cut themselves out routinely.
22. The staff's ability to deescalate patients and to administer restraints was completely inadequate.
23. The Greystone Administration routinely pressured us to take patients off one-to-one observation, despite the risks it posed. Already overworked, the Administration would force the psychiatrists to spend hours every week justifying our decisions to keep patients on one-to-one. The Administration arbitrarily took patients off one-to-one regardless of the psychiatrist's clinical assessments.
24. I routinely saw other patients and staff members being assaulted. This occurred daily.
25. I have responded to several "code blue" calls, and sometimes I would actively administer aid until the emergency doctor arrived. The medical response falls well below the professional standard, because equipment and training were systematically being downgraded.
26. I, along with my colleagues, constantly bought up the aforementioned deficiencies to the Administration. Rather than change, the Administration retaliated against us, and destroyed whatever standard of care was left in the process.

27. I resigned from Greystone due to the Administration's retaliation against me, and its complete deafness to improve patient care and safety.

28. In psychiatry, there is a concept that the best predictor of future conduct is past behavior. The Administration's previous conduct demonstrated that they have no desire, intent, or will to make any improvements upon patient care or safety. In my professional judgement, I have no confidence that the Greystone Administration will do anything differently in the future.

29. The Greystone Administration has failed to administer the appropriate standard of care for its patients. As a direct result of their actions and omissions, patients have been seriously hurt.

30. The above in no way encompasses the totality of egregious circumstances that had transpired at Greystone during my employment. I am willing to testify before the Court in full detail, should it permit.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

s/ Danijela-Ivelja Hill
Dr. Danijela-Ivelja Hill, MD

Executed on: June 12, 2019

JOSEPH E. KRAKORA, PUBLIC DEFENDER
OFFICE OF THE PUBLIC DEFENDER
DIVISION OF MENTAL HEALTH ADVOCACY
31 CLINTON STREET, 11TH FLOOR
NEWARK, NEW JERSEY 07102
973-648-3847
BY: RIHUA XU, ESQ.
ASSISTANT DEPUTY PUBLIC DEFENDER
Attorney ID No.: 122232014

J.M. et al., individually and on behalf of all other persons similarly situated,	UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY HON. ESTHER SALAS, U.S.D.J. HON. CATHY L. WALDOR, U.S.M.J.
Plaintiffs,	**CIVIL ACTION No.**: 2:18-cv-17303
v.	**DECLARATION IN SUPPORT OF PRELIMINARY INJUNCTION**
SHEREEF M. ELNAHAL, M.D., et al.	**Pedro Mendoza**
Defendants.	

I, Pedro Mendoza, of full age, hereby declare as follows under penalty of perjury pursuant to Section 1746 of Title 28 of the United States Code:

1. I was the Director of Safety and Fire Department at Greystone Park Psychiatric Hospital from April of 2011 until February of 2018.

2. I have been a safety professional for more than 30 years, including 18 years as a New Jersey State employee. From 1981 to 1992, I was a Guidance and Navigation Production Engineer

at Singer-Kearfott. From 1992 – 2011, I was a Manufacturing Manager, Director of International Technical Services, and Safety Manager at Gilian Instruments.

3. I am making this voluntary statement under oath and agree to testify in court at no benefit to myself. I have personal knowledge regarding every statement I make herein.

4. As the Director of Safety and Fire Department, I had access to Greystone Administration's internal records, including assault levels, structural and engineering deficits, and fire safety violations.

5. I had "read access" to then Chief Operating Officer Ross Friedman's computer files.

6. I was also "covering" the responsibilities of Fire Chief Vincent Conte and supervising the Greystone Fire Department staff.

7. In 2017, I was ordered by the Greystone Administration to modify the records of assaults submitted to the Public Employees Occupational Safety and Health of the Department of Health.

8. I have personal knowledge that the Greystone Administration had tampered with other sets of data to reflect a significantly lower level rate of assault, and that these fraudulent sets of data had been submitted to New Jersey

State regulators. I was ordered to "work with" these fraudulent sets of data, but repeatedly refused.

9. I openly opposed the Greystone Administration's conspiracy to deceive State regulators, its employees, and the public. I knew the conduct the Greystone Administration was engaged in is illegal. Further, the Greystone Administration's response in the face of a growing humanitarian crisis was unconscionable.

10. Because of my refusal, the Greystone Administration sustained a campaign of hostility, retaliation, and slander against me that ultimately resulted in my removal from Greystone on February of 2018.

11. During my tenure as Director, I also repeatedly opposed the Administration's total disregard towards addressing the issues surrounding violence. The escalading levels of violence and mortality at Greystone had reached a point where patients were seriously hurt daily. Many of the problems contributing to the dangerous conditions were completely preventable by the Greystone Administration.

12. Rather than fixing any myriad of issues, the Administration engaged in a massive coverup, where fraud, intimidation, deceit, and manipulation were commonplace.

13. The Greystone Administration wanted to deny that workplace violence existed and was working to actively conceal that workplace violence was increasing.

14. The Administration wanted to conceal that fractures, concussions, and other injuries were occurring recurrently, and that employees and patients were being sent out to the emergency rooms in incidents that were increasing with alarming regularity.

15. Prior, I was the safety professional assigned to work in conjunction with Engineering Department and contractors to address the various issues regarding the structural renovations and deficiency for Greystone after we obtained possession and occupancy of the new building. The deficiencies were found by the Joint Commission during their routine accreditation inspection.

16. Greystone's contractor, Torcon, had failed to fulfill its contractual obligations during the building of Greystone Hospital, including missing installation of Fire Stop between the major structural support beams. Without Fire Stop, in the event of a fire, the heat from the fire could warp the support beams, causing total structural failure and collapse.

17. In my professional judgement, making the Hospital fire safe was paramount, as Greystone routinely treats arsonists, and fires had been set in the Hospital before.

18. We were informed at various Safety Committee Meetings by the Greystone Administration that Greystone would have approximately 17 million dollars from the Torcon litigation to implement critical infrastructure fixes, such as the Fire Stop. In my professional judgement, I determined this to be of paramount priority.

19. However, the vast majority of the 17 million dollars recovered from the litigation, once received by the State, were diverted. Most of the critical infrastructure fixes that we spent months planning were never executed. The only changes made were in select rooms directly cited by the Joint Commission to pass inspection, despite these issues existing in virtually every other comparable structural location in the hospital. The Administration was more concerned about appearances rather than actual safety. To my knowledge, critical infrastructure problems that cause direct threats to the safety of patients were never addressed.

20. The Greystone Administration had failed to administer the appropriate standard of care for its patients. As a direct result of their actions and omissions, patients had died and had been seriously hurt.

21. The above in no way encompasses the totality of egregious circumstances that have transpired at Greystone. I am willing to testify before the Court in full detail, should it permit.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

s/ Peter Mendoza
Pedro Mendoza

Executed on: June 12, 2019

JOSEPH E. KRAKORA, PUBLIC DEFENDER
OFFICE OF THE PUBLIC DEFENDER
DIVISION OF MENTAL HEALTH ADVOCACY
31 CLINTON STREET, 11TH FLOOR
NEWARK, NEW JERSEY 07102
973-648-3847
BY: RIHUA XU, ESQ.
ASSISTANT DEPUTY PUBLIC DEFENDER
Attorney ID No.: 122232014

J.M. et al., individually and on behalf of all other persons similarly situated,	UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY HON. ESTHER SALAS, U.S.D.J. HON. CATHY L. WALDOR, U.S.M.J.
Plaintiffs,	**CIVIL ACTION No.**: 2:18-cv-17303
v.	**CERTIFICATION IN SUPPORT OF PRELIMINARY INJUNCTION**
SHEREEF M. ELNAHAL, M.D., et al.	**Carl J. Herman, Esq.**
Defendants.	

I, Carl J. Herman, of full age, hereby certify as follows under penalty of perjury pursuant to Section 1746 of Title 28 of the United States Code:

1. I am an attorney at law admitted in the State of New Jersey and before this Court. I am the Director of the Division of Mental Health Advocacy of the New Jersey Office of the Public Defender.

2. Since the filing of the original complaint last December, my Office has engaged in good faith negotiations with the

Defendants to address the immediate concerns surrounding Greystone Park Psychiatric Hospital.

3. My Office met in person with attorneys from the Attorney General's Office on February 6 and March 26, 2019, and delivered specific demands, both orally and in writing, to address the problems and highlight the changes immediately necessary to increase safety to Plaintiffs and other patients.
4. Over the course of these negotiations, it has become increasingly clear that Court intervention is essential to adequately remedy the Constitutional violations.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

/s Carl J. Herman
Carl J. Herman, Esq.

Executed on: June 13, 2019

JOSEPH E. KRAKORA, PUBLIC DEFENDER
OFFICE OF THE PUBLIC DEFENDER
DIVISION OF MENTAL HEALTH ADVOCACY
31 CLINTON STREET, 11TH FLOOR
NEWARK, NEW JERSEY 07102
973-648-3847
BY: RIHUA XU, ESQ.
ASSISTANT DEPUTY PUBLIC DEFENDER
Attorney ID No.: 122232014

J.M. et al., individually and on behalf of all other persons similarly situated, Plaintiffs, v. SHEREEF M. ELNAHAL, M.D., et al. Defendants.	UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY HON. ESTHER SALAS, U.S.D.J. HON. CATHY L. WALDOR, U.S.M.J. **CIVIL ACTION No.**: 2:18-cv-17303 **PROPOSED ORDER GRANTING MOTION FOR PRELIMINARY INJUNCTION**

THIS MATTER having been opened to the Court by Plaintiffs J.M., *et al.* (Plaintiffs), and by their undersigned attorneys, upon motion for an order granting preliminary injunction, based on the facts set forth in the Declarations of Dr. Walter Bakun, Dr. Anthony Gotay, Dr. Margarita Gormus, Dr. Yeshuschandra Dhaibar, Dr. Danijela-Hill, and Pedro Mendoza, the Certification of Carl J. Herman, Esq. and the accompanying Memorandum of Law; and

IT APPEARING TO THE COURT that:

1. Plaintiffs are likely to succeed on the merits of their action; and

2. Plaintiffs are currently sustaining and are at risk in the future of sustaining immediate and irreparable injury, including physical injury, death and continued deprivation of Constitutional rights; and
3. The injuries suffered and to be suffered outweigh any harm that the relief will inflict upon the Defendants; and
4. The relief sought serves the public interest; and
5. The injuries being sustained by Plaintiffs and which may be sustained in the future are irreparable because this Court has found that the injury and risk of injury is of the nature of physical harm and death, and the deprivation of Constitutional rights, such that there will be no adequate remedy in damages; and
6. Plaintiffs have been and are unable to abate the dangerous and life-threatening conditions at Greystone, despite many and repeated requests to the Defendants; and
7. Plaintiffs and the patient population of Greystone remain at risk of continued physical injury and death due to the present conditions at Greystone, and will remain at risk unless Defendants act to correct the dangerous conditions; and
8. The repeated requests and demands from Plaintiffs and from Greystone staff to the Defendants have not resulted in cooperation or improvement; and

9. The submission by Plaintiffs with respect to this motion, including the Declarations of Dr. Walter Bakun, Dr. Anthony Gotay, Dr. Margarita Gormus, Dr. Yeshuschandra Dhaibar, Dr. Danijela-Hill and Pedro Mendoza, the Certification of Carl J. Herman, Esq. as well as the allegations made in Plaintiffs' First Amended Complaint, have sufficiently demonstrated that the balance of the equities favors Plaintiffs; and it is therefore

ORDERED that for all of the foregoing reasons, the Court, for good cause shown, directs that Defendants shall appear and show cause before this Court, Martin Luther King Building & United States Courthouse, Newark, New Jersey, in Courtroom ___, on the _____ day of _____, 2019 at _____ a.m / p.m., or as soon thereafter as counsel can be heard, as to why an Order pursuant to Federal Rule of Civil Procedure 65 and Local Civil Rule 65.1 should not be entered in favor or Plaintiffs granting the following preliminary relief:

1. That Defendants Shereef M. Elnahal, M.D., *et al.* (Defendants), its officers, agents, servants, employees, and all those in privity or acting in concert with Defendants, be and hereby are preliminarily enjoined from directly or indirectly violating Plaintiffs' rights under the Rehabilitation Act, the Americans with Disabilities Act, the

Fifth and Fourteenth Amendment of the United States Constitution, and New Jersey State law by:

a. Providing adequate training for hospital staff and mental health technicians for the prevention of violence against patients and hospital staff;

b. Providing adequate supervision for hospital subordinates (including advanced practice nurses and mental health technicians) to ensure an adequate level of medical and psychiatric care for Plaintiffs;

c. Require adequate and medically appropriate medication monitoring for Plaintiffs;

d. Reinstituting Advanced Cardiac Life Support ("ACLS") protocol and training and certifying staff in ACLS rather than the Basic Life Support protocol currently implemented at Greystone;

e. Ensuring that Greystone is in compliance with the number of full-time staff required in each unit, given the patient population, to ensure proper medical and psychiatric care;

f. Ensuring that each psychiatrist has an appropriate caseload that allows for an adequate standard of care to Plaintiffs as indicated in Greystone's Bylaws;

g. Ensuring that each psychiatrist testifying at involuntary commitment hearings are a part of a

patient's treatment team, and has seen the patient within five days of the hearing;

h. Addressing the hazards accompanied with the Patient Information Center (PIC) by ensuring that the wires in the ceiling are out of reach from patients (at least 18-inches above the ceiling tiles) and by installing a barrier to make sure that patients are unable to climb the PIC;

i. Installing (1) fire insulation in all units, and (2) fire retardant security doors throughout the facility that cannot be kicked open;

j. Maintaining one "fully stocked" code cart per unit, and implementing a modified operating procedure whereby a code cart is immediately deployed by the responding nurse to the scene during a "Code Blue";

k. Implementing and adhering to a policy that establishes medically appropriate requirements for a patient to be placed on 1:1 observation and 2:1 observation as well as implementing and adhering to a medically appropriate policy that establishes when a patient can be taken off 1:1 observation and 2:1 observation; and

l. Establishing a temporary, independent monitor to ensure that Defendants are abiding by the aforementioned paragraphs in this Order; and it is further

ORDERED that Plaintiffs shall serve a copy of this Order, the Declarations of Dr. Walter Bakun, Dr. Anthony Gotay, Dr. Margarita Gormus, Dr. Yeshuschandra Dhaibar, Dr. Danijela-Hill and Pedro Mendoza, the Certification of Carl J. Herman, Esq. and the accompanying Memorandum of Law, on counsel for Defendants by ECF, personal service, e-mail (if agreed upon in advance), Federal Express, or certified mail – return receipt requested, any of which shall be deemed sufficient service upon each Defendant, within ___ days of the date hereof; and it is further

ORDERED that Plaintiffs must file with the Court, their proof of service on the Defendants no later than ___ days before the return date; and it is further

ORDERED that Defendants, if they oppose Plaintiffs' application for preliminary relief, shall serve by ECF, personal service, e-mail (if agreed upon in advance), Federal Express, or certified mail – return receipt requested, and file a written response by _____, 2019; and it is further

ORDERED that Plaintiff shall serve by ECF, personal service, e-mail (if agreed upon in advance), Federal Express, or certified mail – return receipt requested, and file a reply thereto or other submission before by _____, 2019; and it is further

ORDERED that if Defendants do not file and serve opposition to this application, the application will be decided on the papers on the return date, and relief may be granted by default, provided

that Plaintiff files a proof of service and proposed form of Order at least ___ days prior to the return date; and it is further

ORDERED that if Plaintiff has not already done so, a proposed form of Order addressing the relief sought on the return date must be submitted to the Court no later than ___ days before the return date.

_____
HON. ESTHER SALAS, U.S.D.J.