

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

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LA RON MCKINLEY BEY,

Plaintiff,

v.

Case No. 16-CV-0521

WILLIAM POLLARD, ET AL. ,

Defendants.

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**DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT**

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Defendants, William Pollard, Brian Foster, Tony Meli, Jon Litscher, Cathy Jess, Dr. Steven Schmidt, Brian Greff, Paul Ludvigson, John O'Donovan, Jeremy Westra, Jessie Schneider, Shane Waller, Jeremy Staniec, and Joseph Beam, by their attorneys, Attorney General Brad D. Schimel and Assistant Attorneys General Ann M. Peacock and Shannon A. Buttchen, answer plaintiff's amended complaint as follows:

**A. PARTIES**

1. Answering paragraph 1 of the "Parties" section, **ADMIT.**
2. Answering paragraph 2 of the "Parties" section, **ADMIT.**
3. Answering paragraph 3 of the "Parties" section, **ADMIT.**
4. Answering paragraph 4 of the "Parties" section, **ADMIT.**
5. Answering paragraph 5 of the "Parties" section, **ADMIT.**
6. Answering paragraph 6 of the "Parties" section, **ADMIT.**

7. Answering paragraph 7 of the “Parties” section, **ADMIT**.
8. Answering paragraph 8 of the “Parties” section, **DENY** and **AFFIRMATIVELY ALLEGE** Brian Greff is currently employed at Dodge Correctional Institution, PO Box 661, Waupun, WI 53963.
9. Answering paragraph 9 of the “Parties” section, **ADMIT**.
10. Answering paragraph 10 of the “Parties” section, **ADMIT** John O’Donovan is a named defendant in this matter; **AFFIRMATIVELY ALLEGE** he is currently employed at Dodge Correctional Institution, PO Box 661, Waupun, WI 53963.
11. Answering paragraph 11 of the “Parties” section, **ADMIT**.
12. Answering paragraph 12 of the “Parties” section, defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations, therefore, **DENY**.
13. Answering paragraph 13 of the “Parties” section, **ADMIT**.
14. Answering paragraph 14 of the “Parties” section, **DENY** and **AFFIRMATIVELY ALLEGE** Shane Waller is currently employed at Dodge Correctional Institution, PO Box 661, Waupun, WI 53963.
15. Answering paragraph 15 of the “Parties” section, **ADMIT**.
16. Answering paragraph 16 of the “Parties” section, **ADMIT**.
17. Answering paragraph 17 of the “Parties” section, defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations, therefore, **DENY**.

## **B. STATEMENT OF CLAIM**

1. Answering paragraph 1 of the “Statement of Claim” section, **DENY** defendants deprived plaintiff of any federal rights.

2. Answering paragraph 2 of the “Statement of Claim” section, **ADMIT** plaintiff has been housed in the Restrictive Housing Unit<sup>1</sup> at WCI for more than four years; **DENY** that plaintiff has been in Administrative Confinement status the entire time.

3. Answering paragraph 3 of the “Statement of Claim” section, **ADMIT** the Restrictive Housing Unit confines inmates for the purpose of separation from general population inmates; **DENY** remaining allegations.

4. Answering paragraph 4 of the “Statement of Claim” section, **DENY**.

5. Answering paragraph 5 of the “Statement of Claim” section, **DENY**.

6. Answering paragraph 6 of the “Statement of Claim” section, **DENY**.

7. Answering paragraph 7 of the “Statement of Claim” section, **ADMIT** some inmates in the Restrictive Housing Unit are housed there for punitive purposes; **DENY** remaining allegations.

8. Answering paragraph 8 of the “Statement of Claim” section, **ADMIT** inmates in the Restrictive Housing Unit are single celled; **DENY** remaining allegations.

Answering paragraph 8(i) of the “Statement of Claim” section, **ADMIT** the Restrictive Housing Unit uses a step program to measure behavior and reward positive behavior; **ADMIT** inmates on C range have the most privileges.

Answering paragraph 8(ii) of the “Statement of Claim” section, **DENY** and **AFFIRMATIVELY ALLEGE** the Restrictive Housing Unit houses inmates on Administrative Confinement, Controlled Separation, Disciplinary Separation, Observation status, Protective Confinement and Temporary Lockup status.

Answering paragraph 8(iii) of the “Statement of Claim” section, **ADMIT** Administrative Confinement status is a non-punitive status; **DENY** that defendants use it as a form of punishment.

Answering paragraph 8(iv) of the “Statement of Claim” section, **ADMIT** that if plaintiff engaged in negative behavior, he could be subjected to demotion of his status; **DENY** that plaintiff is not allowed to move forward out of indefinite seclusion.

Answering paragraph 8(v) of the “Statement of Claim” section, **ADMIT** plaintiff was placed in clinical observation status twice in 2013 based on reports of suicidal thoughts and depression; **DENY** remaining allegations.

Answering paragraph 8(vi) of the “Statement of Claim” section, **DENY**.

Answering paragraph 8(vii) of the “Statement of Claim” section, **ADMIT** plaintiff cannot have a job, art supplies, or participate in educational programs (other than treatment groups, anger management, the new freedom program, and CGIP); **ADMIT** the cell windows do not open; **DENY** remaining allegations.

Answering paragraph 8(viii) of the “Statement of Claim” section, **ADMIT**.

Answering paragraph 8(ix) of the “Statement of Claim” section, **DENY**.

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<sup>1</sup> The Restrictive Housing Unit was formerly known as the Segregation Unit. These terms

Answering paragraph 8(x) of the “Statement of Claim” section, **ADMIT** the Restrictive Housing Unit has several cameras; **DENY** remaining allegations.

Answering paragraph 8(xi) of the “Statement of Claim” section, **DENY**.

Answering paragraph 8(xii) of the “Statement of Claim” section, defendants lack sufficient knowledge of information to form a belief as to the truth of the allegations, and therefore, **DENY**.

Answering paragraph 8(xiii) of the “Statement of Claim” section, **DENY**.

Answering paragraph 8(xiv) of the “Statement of Claim” section, **ADMIT** there is no mandatory requirement for staff to sign in/out of the Restrictive Housing Unit; however, psychological staff log in/out and the sergeant logs other visitors in the unit log book. Further, crises and serious incidents are documented in incident reports, which prove who was present; **DENY** staff exploit “this security loophole to avoid accountability by denying being present during crisis, or other serious incidents.”

Answering paragraph 8(xv) of the “Statement of Claim” section, **DENY**.

Answering paragraph 8(xvi) of the “Statement of Claim” section, **DENY**.

Answering paragraph 8(xvii) of the “Statement of Claim” section, **ADMIT** the cells have low dim lights for security and safety purposes; defendants lack sufficient knowledge or information to form a belief as to the truth of whether the dim light exposure exacerbates plaintiff’s sleep deprivation and head and eye aches, therefore, **DENY**.

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may be used interchangeably.

Answering paragraph 8(xviii) of the “Statement of Claim” section, **DENY** and **AFFIRMATIVELY ALLEGE** the exercise areas are approximately 10’ x 7’ in dimensions.

Answering paragraph 8(xix) of the “Statement of Claim” section, **DENY** the guards abuse and assault prisoners during escort; **DENY** the recreation area is filthy; **ADMIT** there are no bathroom facilities or emergency call buttons in the recreation area; lack sufficient knowledge or information to form a belief as to the truth of why plaintiff or other prisoners may not want to attend recreation, therefore **DENY**.

Answering paragraph 8(xx) of the “Statement of Claim” section, **DENY**.

Answering paragraph 8(xxi) of the “Statement of Claim” section, **ADMIT** there are property limitations, including canteen, for inmates assigned to the Restrictive Housing Unit; however, **DENY** the property limitations are due to an intent to punish inmates.

Answering paragraph 8(xxii) of the “Statement of Claim” section, **DENY**.

Answering paragraph 8(xxiii) of the “Statement of Claim” section, **ADMIT**, but clarify inmates in the Restrictive Housing Unit are given a total of 15 minutes per shower, which includes 7 minutes of running water.

Answering paragraph 8(xxiv) of the “Statement of Claim” section, **ADMIT**.

Answering paragraph 8(xxv) of the “Statement of Claim” section, **DENY**.

Answering paragraph 8(xxvi) of the “Statement of Claim” section, **ADMIT** all food trays at WCI are not brand new and exhibit signs of normal wear; **DENY** remaining allegations.

Answering paragraph 8(xxvii) of the “Statement of Claim” section, defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations, and therefore, **DENY**.

Answering paragraph 8(xxviii) of the “Statement of Claim” section, **ADMIT** the sewer drains have backed up on occasion due to other inmates’ tampering with the plumbing.

Answering paragraph 8(xxix) of the “Statement of Claim” section, **ADMIT** bottled water is not allowed; **ADMIT** the water was tested and above normal lead amounts was found in remote areas of the institution. Notice was posted to run water to ensure safe usage.

9. Answering paragraph 9 of the “Statement of Claim” section, **ADMIT** Defendant Pollard was Warden of WCI and was responsible for the overall administration and operation of the prison; **DENY** remaining allegations.

10. Answering paragraph 10 of the “Statement of Claim” section, **ADMIT** Defendant Foster is Warden of WCI and is responsible for the overall administration and operation of the prison; **DENY** remaining allegations.

11. Answering paragraph 11 of the “Statement of Claim” section, **ADMIT** Defendant Meli is the Security Director at WCI and supervises the security program for the institution; **DENY** remaining allegations.

12. Answering paragraph 12 of the “Statement of Claim” section, **ADMIT** Defendant Litscher is Secretary of the DOC and has general supervisory authority over DOC operations; **DENY** remaining allegations.

13. Answering paragraph 13 of the “Statement of Claim” section, **ADMIT** Defendant Jess was formerly the DAI Administrator and is currently the DOC Deputy Secretary; **DENY** remaining allegations.

14. Answering paragraph 14 of the “Statement of Claim” section, lack sufficient knowledge or information to form a belief as to the truth of whether Defendant Schmidt is aware that long-term isolation can be toxic to health as the effects would vary depending on the particular inmate’s circumstances, and therefore, **DENY**; **ADMIT** remaining allegations.

15. Answering paragraph 15 of the “Statement of Claim” section, **ADMIT** Defendant Greff was formerly a Corrections Program Supervisor and Defendant Ludvigson is currently a Corrections Program Supervisor; **ADMIT**, as Corrections Program Supervisors, they may make recommendations for AC placements; **ADMIT** Ludvigson was formerly a psychologist; **DENY** remaining allegations.

16. Answering paragraph 16 of the “Statement of Claim” section, **ADMIT** Defendant O’Donovan was formerly a Captain at WCI and Defendant Westra currently is a Captain at WCI; **ADMIT** that, at times, Defendants O’Donovan and Westra were members of the ACRC; **DENY** remaining allegations.

17. Answering paragraph 17 of the “Statement of Claim” section, **ADMIT** Defendant Schneider was a Lieutenant in the Restrictive Housing Unit from 2012 – 2015; **ADMIT** Defendant Waller was a Lieutenant in the Restrictive Housing Unit from 2015-2016; **DENY** remaining allegations.



18. Answering paragraph 18 of the “Statement of Claim” section, **ADMIT** Defendants Staniec and Beahm, along with many others, were assigned to the Restrictive Housing Unit at WCI; **DENY** remaining allegations.

19. Answering paragraph 19 of the “Statement of Claim” section, **DENY**.

20. Answering paragraph 20 of the “Statement of Claim” section, **DENY**.

21. Answering paragraph 21 of the “Statement of Claim” section, **DENY**.

22. Answering paragraph 22 of the “Statement of Claim” section, **DENY**.

23. Answering paragraph 23 of the “Statement of Claim” section, **DENY**.

24. Answering paragraph 24 of the “Statement of Claim” section, **DENY**.

25. Answering paragraph 25 of the “Statement of Claim” section, **DENY**.

26. Answering paragraph 26 of the “Statement of Claim” section, **DENY**.

27. Answering paragraph 27 of the “Statement of Claim” section, **AFFIRMATIVELY ALLEGE** that plaintiff’s assertions set forth a legal conclusion to which no response is required. To the extent a response is required, defendants **DENY**.

28. Answering paragraph 28 of the “Statement of Claim” section, **DENY**.

29. Answering paragraph 29 of the “Statement of Claim” section, **DENY**.

30. Answering paragraph 30 of the “Statement of Claim” section, **DENY**.

31. Answering paragraph 31 of the “Statement of Claim” section, **DENY**.

32. Answering paragraph 32 of the “Statement of Claim” section, **DENY**.

33. Answering paragraph 33 of the “Statement of Claim” section, **DENY**.

34. Answering paragraph 34 of the “Statement of Claim” section, **DENY**.

### **LEGAL THEORY**

35-41. Answering paragraphs 35-41 of the “Legal Theory” section, **AFFIRMATIVELY ALLEGE** that plaintiff’s assertions set forth a legal conclusion to which no response is required. To the extent a response is required, defendants **DENY** all allegations and further **DENY** that plaintiff’s rights were violated in any manner.

### **C. JURISDICTION**

Answering the “Jurisdiction” section of plaintiff’s amended complaint, **ADMIT**.

### **D. RELIEF WANTED**

Answering paragraphs A1-A7 of the “Relief Wanted” section of plaintiff’s amended complaint, **DENY** that plaintiff is entitled to injunctive relief.

Answering paragraphs B1-B4 of the “Relief Wanted” section of plaintiff’s amended complaint, **DENY** that plaintiff is entitled to a declaratory judgment.

Answering paragraphs C1-C3 of the “Relief Wanted” section of plaintiff’s amended complaint, **DENY** that plaintiff is entitled to any of the relief he seeks.

### **OTHER**

Defendants **DENY** any and all allegations in plaintiff’s amended complaint not specifically admitted above.

### **AFFIRMATIVE DEFENSES**

As and for the affirmative defenses in this action, defendants state as follows:

1. All or portions of plaintiff’s complaint fail to state a claim upon which relief can be granted.

2. All or portions of this action may be subject to dismissal pursuant to doctrines of qualified immunity, sovereign immunity, and discretionary immunity.

3. At all times relevant to matters alleged in plaintiff's amended complaint, the defendants acted in good faith in accordance with established laws and administrative rules.

4. The action must be dismissed to the extent that it names the defendants in their official capacity.

5. The action must be dismissed for plaintiff's failure to exhaust administrative remedies.

6. The action must be dismissed because defendants had no personal involvement whatsoever in the events leading to or surrounding the incident which is the basis of this lawsuit.

7. The defendants cannot be found liable for the actions of any other individuals under a theory of *respondeat superior*.

8. The defendants are not the agent, servant, or employee of any other individual and, therefore, there can be no liability against defendants predicated on the actions or inactions of another individual.

9. In the event that plaintiff argues that any claims arise under state law, all or a portion of plaintiff's complaint is subject to or barred by the doctrines of comparative negligence, contributory negligence, and/or of superseding cause.

10. In the event that plaintiff argues that any claims arise under state law, those claims are subject to the requirements, provisions, terms, conditions, and limitations of Wis. Stat. § 893.82.

11. Any claims for monetary damages in this case are limited under the provisions of 42 U.S.C. § 1997e(e).

12. The defendants reserve the defense of plaintiff's failure to mitigate damages.

13. The defendants reserve the right to name additional affirmative defenses, as they may become known through further discovery or otherwise in this action.

**WHEREFORE**, the defendants demand judgment dismissing plaintiff's amended complaint on the merits with prejudice, and for such other relief as the court deems just and proper, including the award of defendants' reasonable attorney fees and expenses.

Dated this 14th day of October, 2016.

Respectfully submitted,

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