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Attorneys for Plaintiff Desiree Torusio

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

DESIREE TORUSIO,	:	
	:	Civ. Act. No. 2:11-CV-00452 (KSH)(PS)
Plaintiff,	:	
	:	FIRST AMENDED COMPLAINT
vs.	:	AND DEMAND FOR JURY TRIAL
	:	
JANET MONROE, in her official and	:	
individual capacities; MICHAEL S.	:	
STEWART, in his official and individual	:	
capacities; DENISE PAULSON, in her	:	
official and individual capacities; LINDA	:	
WRIGHT, in her official and individual	:	
capacities; OLAFUNMILA OJEDIRAN, in	:	
her official and individual capacities; LOU	:	
CASSARO, in his official and individual	:	
capacities; JOHN AND JANE DOES 1-15,	:	
in their official and individual capacities,	:	
	:	
Defendants.	:	

Plaintiff, Desiree Torusio f/k/a Desiree Lines ("Plaintiff"), having an address of 13 Yacht Club Drive, Lake Hopatcong, New Jersey 07849, as and for her Complaint against Defendants alleges:

Nature of the Action

1. This is a civil rights lawsuit brought to obtain redress for serious injuries Plaintiff sustained in a brutal assault during her involuntary commitment at Greystone

Park Psychiatric Hospital (“Greystone”). The February 2009 assault was perpetrated by another Greystone patient known to Defendants, the staff at Greystone entrusted with Plaintiff’s custody and care, to be violent, aggressive, and dangerous.

2. In a departure from any reasonable exercise of their professional judgment and with deliberate indifference to Plaintiff’s most basic constitutional rights to be free from harm while in the involuntary legal and physical custody of the state, Defendants failed to protect Plaintiff from the assault and aggravated her injuries thereafter. Compensatory and punitive damages are sought against all Defendants and trial by jury is hereby demanded.

The Parties, Jurisdiction and Venue

3. Plaintiff is, and at all relevant times was, an adult resident of the State of New Jersey.

4. Greystone is a 450-bed psychiatric facility located in Morris Plains, New Jersey. Greystone is operated by the New Jersey State Division of Mental Health, a division of the New Jersey Department of Human Services, an executive agency of the State of New Jersey.

5. At all relevant times, Defendant Janet Monroe (“Monroe”) was the Chief Executive Officer of Greystone with overall supervisory responsibilities for the treatment and safety of all Greystone patients including Plaintiff. Upon information and belief, Monroe, who is sued herein in both her individual and official capacities, is a resident of the State of New Jersey.

6. At all relevant times, Defendant Michael S. Stewart (“Stewart”) was a Clinical Psychiatrist employed by Greystone with direct responsibility for the treatment

and safety of Plaintiff. Upon information and belief, Stewart, who is sued herein in both his individual and official capacities, is a resident of the State of New Jersey.

7. Upon information and belief, at all relevant times, Defendant Denise Paulson (“Paulson”) was a Clinical Psychologist employed by Greystone with direct responsibility for the treatment and safety of Plaintiff. Upon information and belief, Stewart, who is sued herein in both her individual and official capacities, is a resident of the State of New Jersey.

8. At all relevant times, Defendant Linda Wright (“Wright”) was a Senior Human Service Technician employed by Greystone. Upon information and belief, Wright, who is sued herein in both her individual and official capacities, is a resident of the State of New Jersey.

9. Upon information and belief, at all relevant times, Defendant Olufunmila Ojediran (“Ojediran”) was a Section Chief of Greystone with direct supervisory responsibility for Wright. Upon information and belief, Ojediran, who is sued herein in both her individual and official capacities, is a resident of the State of New Jersey.

10. Upon information and belief, at all relevant times, Defendant Lou Cassaro (“Cassaro”) was Section Chief of Greystone with overall responsibilities for the treatment and safety of Greystone patients including Plaintiff.

11. The identities of Defendants Jane and John Does Nos. 1-5 (the “Additional Administrative Staff Defendants”) are currently unknown to Plaintiff. The Additional Administrative Staff Defendants are psychiatrists, psychologists, treatment team members, and administrators with responsibilities for the treatment and safety of Plaintiff.

12. The identities of Defendants Jane and John Does Nos. 6-15 (the “Additional Direct Staff Defendants”) are currently unknown to Plaintiff. The Additional Direct Staff Defendants are aides, nurses and other Greystone employees with direct responsibilities for the treatment and safety of Plaintiff at the time of her assault. The Additional Direct Staff Defendants are sued herein in both their individual and official capacities.

13. Pursuant to 28 U.S.C. §§ 1331 and 1343, this Court has original jurisdiction over Plaintiff’s claims arising under the United States Constitution and 42 U.S.C. §§ 1983 and 1988.

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) as the events and omissions giving rise to Plaintiff’s claims arose in Morris County, New Jersey.

Facts

Plaintiff’s Commitment and Placement at Greystone

15. Plaintiff is a 40-year old Caucasian woman with a history of depression, bipolar disorder, substance abuse, cutting and eating disorders.

16. On or about December 16, 2008, Plaintiff was admitted to Newton Memorial Hospital in Newton, New Jersey with self-inflicted cuts on both forearms.

17. Following assessment and screening, by Order of the Superior Court of New Jersey on or about December 18, 2008, Plaintiff was adjudged to be a danger to herself and was placed into the legal and physical custody of the State of New Jersey by a Temporary Order of Commitment issued pursuant to N.J.S.A. § 30:4-27.10.

18. On or about December 28, 2008, Plaintiff was transferred by the State to Greystone for treatment and care.

19. Following a commitment hearing, upon information and belief in or around January 2010, the Superior Court issued a further Order continuing Plaintiff's involuntary commitment pursuant to N.J.S.A. § 30:4-27.15(a).

20. At all relevant times, Plaintiff was in the involuntary legal and physical custody of the State of New Jersey and placed for treatment at Greystone.

21. When Plaintiff arrived at Greystone she was placed in the A-1 unit, one of two admission units at Greystone. In or around January 2009, Plaintiff was transferred to B-1, the other admission unit.

22. Both units contained approximately 30-40 patients housed two to a room. Each unit had a seclusion room for patients acting out, a commons room, and a cafeteria.

23. The patient population on the admission units at Greystone in February 2009 included *Krol* patients, those acquitted of criminal offenses by reason of insanity and deemed a danger to themselves or others, and MICA patients, mentally ill chemically addicted patients.

24. Furthermore, the patient population on the admission units at Greystone in February 2009 included patients known by Greystone staff, including the Defendants herein, to be aggressive and prone to commit violent acts.

25. The commingling of patient populations on the admission units was compounded by the fact that many of the patients on the units had yet to be thoroughly assessed and/or stabilized on their medications following the events precipitating their involuntary commitment.

26. Patients on the admission units, including Plaintiff herself, would routinely stay housed on the admission units for months at a time.

27. The foregoing facts regarding the admission units were known to all Defendants.

The Pre-Assault Period

28. One of the patients placed in the B-1 unit with Plaintiff on or about January 27, 2009 was Horace White ("White").

29. Upon information and belief, White was a *Krol* patient with a history of violent criminal activity, including armed robbery, aggravated assault of a police officer, and possession of a weapon for unlawful purposes.

30. White had previously been hospitalized at Greystone from approximately May 2006 to his discharge in August 2008. During this prior hospitalization, White had a number of verbal and physical altercations with other patients and was placed on one-to-one monitoring status on several occasions.

31. White was rehospitalized at Greystone on or about January 27, 2009 after having been involved in an altercation with a neighbor and threatening staff members in a partial care program he attended in East Orange, New Jersey.

32. In the latter portion of January and the first five days of February 2009 (the "pre-assault period"), White terrorized the B-1 unit.

33. Among the actions taken and behaviors displayed by White displayed during this period:

- walking up and down the hallway screaming that he was "going to kill all the white people" (Mr. White was African-American);
- shouting that "all white people should die";

- shouting, in sum or substance, “all white women are bitches who should be raped and killed”;
- telling people not to the “look at [him] wrong” and threatening people who looked at him that he would “gouge their eyes out”;
- making reference to skills he had obtained from the “Anarchist’s Cookbook”;
- punching walls;
- yelling/screaming at all hours of the day and night; and
- banging phones against their hooks and against the wall.

34. Upon information and belief, during the pre-assault period Defendants Stewart, Paulson, Wright, Ojediran, Cassaro, and the Additional Administrative Staff Defendants, the Additional Direct Staff Defendants, and various other Greystone staff witnessed or were informed of some or all of these actions and behaviors by White.

35. During the pre-assault period, Plaintiff repeatedly complained about White’s threatening behaviors to Defendants Stewart, Paulson, Wright, and certain Additional Administrative Staff Defendants and Additional Direct Staff Defendants, as well as to various other staffmembers on the unit, and indicated to these persons that she was afraid of White.

36. During the pre-assault period other patients in the B-1 unit also expressed fear for their safety as a result of White’s conduct and behaviors. In fact, White’s behavior was so troubling to the other patients on B-1, that a number of other patients on the unit signed and presented Greystone staff with a petition seeking to have him transferred because they feared him and believed he was likely to become assaultive.

37. In response to her complaints, Plaintiff was simply told to stay away from White. Upon information and belief, the other complaining patients received only the same advice.

38. During the pre-assault period, various staffmembers on the unit, including Defendants Stewart, Paulson, Wright, and the Additional Administrative Staff Defendants, and the Additional Direct Staff Defendants, were intimidated by White and generally ignored and sought to avoid contact or confrontation with White.

39. Upon information and belief, the only action taken by Defendants or other Greystone staffmembers during this pre-assault period to address White's behaviors and the complaints made about them was to place White first on "intermittent" observation status, on or about February 2, 2009, meaning that pursuant to Greystone's special observation and treatment policy an assigned staff member was to monitor White every 15 minutes and record their observations on a monitoring form.

40. Then, as White's behaviors continued to escalate, White was placed on "one-to-one" monitoring status on or about February 3, 2009, meaning that pursuant to Greystone's policies, he was supposed to be accompanied at all times at arms' length by a Greystone staff member so as to ensure that White would not hurt himself or attack other patients.

41. Notwithstanding this supposed increased monitoring status, neither Defendants nor any other Greystone staff in fact increased the monitoring of White during the pre-assault period beyond the "intermittent" observation status described in Greystone's policies.

42. Notably, during the pre-assault period no Greystone staff consistently accompanied White in the unit so as to preclude his menacing or attacking other patients.

43. Upon information and belief, the fact that Greystone staffmembers on the B-1 unit did not implement “one-to-one” monitoring of White in the manner required by Greystone policy was known to Defendants.

44. Upon information and belief, the fact that staff at Greystone on the admission units routinely failed to implement “one-to-one” monitoring of aggressive patients in a manner consistent with Greystone policy was also known to all Defendants.

45. Upon information and belief, the commingling of patient populations on the admission units, the fact that patients on the admission units were often not yet fully assessed and/or stabilized, the long-term residence of patients on these units, and the failure of Greystone staff to appropriately implement safety protocols such as “one-on-one” monitoring and to otherwise provide appropriate supervision to patients placed in the admission units resulted in a dangerous and volatile situation that was known to all Defendants.

Plaintiff's February 5, 2009 Assault

46. On the morning of February 5, 2009, White was purportedly on "one-on-one" monitoring status pursuant to doctors orders issued on or about February 3, 2009.

47. Notwithstanding Greystone policy that required a monitoring staff member to accompanying a patient on "one-to-one" monitoring status at all times and at no more than arms' length, upon information and belief, during the morning and early afternoon of February 5, 2009, at most White was being monitored as if he was only on "intermittent" observation status.

48. In the morning of February 5, 2009, White was given a risk assessment that determined, *inter alia*, that "[t]here is a [history] of violence towards others which combined with mood instability creates potential for further violence."

49. Nevertheless, upon information and belief, no change was made to White's monitoring status or other effort was made to have White placed in isolation or otherwise separated from other patients following the risk assessment.

50. Following the risk assessment, with Horace White still being monitored only intermittently, at approximately 12:00 pm White and Plaintiff went to the cafeteria for lunch.

51. As of 12:00 p.m., the direct staff person responsible for providing "one-to-one" arms' length monitoring to White was Defendant Wright.

52. Wright was assigned by Ojediran and other Defendants to monitor White despite having previously been suspended for five days without pay for abandoning a one-to-one monitoring assignment in 2008.

53. As White, Plaintiff and other B-1 patients were gathered outside of and then in the cafeteria, Defendant Wright received and took a personal cell phone call and was not present in the cafeteria to monitor White.

54. No other Defendants or Greystone personnel were monitoring White's conduct at this time.

55. At the time of the assault, Plaintiff had obtained a tray of food and was walking to a cafeteria table.

56. White was waiting in the cafeteria line.

57. As Plaintiff walked by, White extended his leg to obstruct her.

58. Plaintiff told White to move his foot and when he refused to do so she stepped around White's foot and attempted to walk by him.

59. After she did so and was attempting to walk away, White – who was more than a foot taller than Plaintiff and outweighed her by more than 100 pounds – punched Plaintiff in the right side of her face and head, causing multiple facial fractures and other severe damage to the right side of her face and to her right eye.

60. Upon information and belief, at the time of the assault, all Greystone staff including Wright and all additional Direct Staff Defendants, were all more than twenty feet away from Plaintiff and White, and Defendant Wright was in another part of the hospital taking her personal cell phone call.

61. After being assaulted by White, Plaintiff immediately dropped to the floor.

62. Upon information and belief, security staff arrived and transported White to the B-1 unit's seclusion room.

63. Upon information and belief, as a result of his attack on Plaintiff, White was charged with aggravated assault, seriously bodily injury, and aggravated assault, bodily injury, by the Morris County Prosecutor's Office.

64. Following the attack, Plaintiff was transferred by ambulance to Morristown Memorial Hospital where she received treatment for her various injuries, including multiple facial fractures, nerve damage, lacerations, and other trauma.

65. After four days of intensive inpatient treatment, including a six-hour trauma surgery, Plaintiff was discharged from Morristown Memorial Hospital and was returned to Greystone and was again placed on the B-1 admissions unit.

66. When Plaintiff was transferred back to Greystone, Plaintiff begged Defendants Stewart and Paulson and other Additional Administrative Staff and Additional Direct Staff Defendants not to be replaced in the B-1 admissions unit where White continued to be housed.

67. Defendants denied Plaintiff's repeated request. As a result, Plaintiff was repeatedly taunted and harassed by other patients regarding the assault. In addition, White himself threatened Plaintiff stating "Keep it up and I'll get the other eye."

68. Plaintiff repeatedly complained to Defendants Stewart and Paulson and to other Additional Administrative Staff and Additional Direct Staff Defendants about this continued mistreatment and repeatedly asked to be transferred to another unit. These complaints were ignored and requests denied.

69. As a result of Defendants' acts and omissions, Plaintiff has been severely and permanently physically and psychologically injured and has to date undergone four reconstructive and rehabilitative surgeries on her eye and face. Plaintiff's injuries include

multiple facial fractures, lacerations, nerve damage, disfigurement, severe eye pain, partial vision loss, double vision, light sensitivity, and severe emotional and mental anguish.

**As and For a First Cause of Action
(42 U.S.C. § 1983 – Substantive Due Process)**

70. Plaintiff hereby incorporates paragraphs 1 through 69 as if set forth fully herein.

71. The aforementioned conduct of Defendants was carried out under color of the law of the State of New Jersey.

72. These Defendants' acts and omissions reflected (i) a departure from any reasonable exercise of their professional judgment, and (ii) deliberate indifference to Plaintiff's most basic constitutional rights to be free from harm while in the involuntary legal and physical custody of the state.

73. As a direct, proximate and foreseeable result of Defendant's actions and omissions, Plaintiff has suffered (i) a violation of her constitutional rights under the Fourteenth Amendment to the United States Constitution, specifically her right to be protected from serious bodily harm while in state custody and to reasonably safe conditions of involuntary confinement, and (ii) actual damages in an amount to be determined at trial.

WHEREFORE, Plaintiff demands Judgment against Defendants, jointly and severally, as follows:

A. Awarding Plaintiff compensatory and punitive damages in an amount to be determined at trial;

- B. Awarding Plaintiff's counsel reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and any other applicable provisions of law;
- C. For post-judgment interest at the statutory rate; and
- D. For such other relief as the Court deems equitable and just.

MORRIS, DOWNING & SHERRED, LLP
Attorneys for Plaintiff Desireé Torusio

By: /s/Todd M. Hooker

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One Main Street
Newton, New Jersey 07860
Ph. 973-383-2700

Dated: December 20, 2011

DESIGNATION OF TRIAL COUNSEL

Todd M. Hooker is hereby designated as trial counsel of this matter.

JURY DEMAND

Plaintiff demands trial by jury of all issues so triable.

CERTIFICATION OF NO OTHER ACTION

On behalf of Plaintiff, I hereby certify that, to the best of my information, knowledge and belief, the matter in controversy is not the subject of any other pending or contemplated action, arbitration proceeding, or administrative proceeding.

By: /s/Todd M. Hooker
 Todd M. Hooker

Dated: December 20, 2011

CERTIFICATION PURSUANT TO RULE 201.1(d)

On behalf of Plaintiff, I hereby certify that the within civil action is based on an alleged violation of a right secured by the Constitution of the United States.

By: /s/Todd M. Hooker
 Todd M. Hooker

Dated: December 20, 2011

RELEASE

THIS RELEASE, dated July 16, 2013, is given

BY the Releasor **DESIREE TORRUSIO**, referred to as "I,"

TO STATE OF NEW JERSEY; MICHAEL S. STEWART in his official and individual capacities; LINDA WRIGHT in her official and individual capacities; and Marc Lipkus in his official and individual capacities, referred to as "You."

If more than one person signs this Release, "I" shall mean each person who signs this Release.

I. RELEASE. I release and give up any and all claims and rights which I may have against you. This Release applies to claims resulting from anything which has happened up to now.

Plaintiff **DESIREE TORRUSIO** (the "Releasor") hereby states that the scope of this Release includes all claims and rights that she has against defendants **STATE OF NEW JERSEY; MICHAEL S. STEWART in his official and individual capacities; LINDA WRIGHT in her official and individual capacities; and Marc Lipkus in his official and individual capacities** arising out of an assault at Greystone Park that occurred on February 5, 2009, and that are the subject of the lawsuit entitled *Torusio v State of NJ, et. al.*, venued in the United States District Court, District of New Jersey, and bearing Docket No. Civ. Action No. 11-452 (KSH).

Plaintiff agrees that Plaintiff alone will be responsible for satisfying all liens related to this litigation. Plaintiff further releases all claims and/or liens, past, current, and/or future arising out of this settlement or asserted against the proceeds of this settlement and agree that they are to be satisfied by Plaintiff, including, but not limited to, any Medicare or Medicaid claims and/or liens, Worker's Compensation claims and/or liens, Social Security claims and/or liens, hospital/healthcare insurer claims and/or liens, physician or attorney claims and/or liens, or any of the statutory, equitable, common law or judgment claims and/or liens.

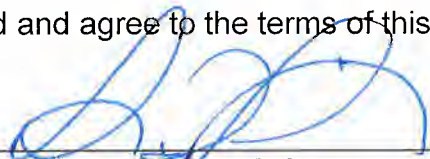
This is a release to release solely those named and no other person who may have any liability for the Releasor's injuries.

2. **PAYMENT.** Payment due at the time of settlement is **\$425,000.00** payable to **DESIREE TORRUSIO** and her attorneys, **LADDEY, CLARK & RYAN, LLP.**

I agree that I will not seek anything further including any other payment.

3. **WHO IS BOUND.** I am bound by this Release. Anyone who succeeds to my rights and responsibilities, such as my heirs or the executor of my estate, is also bound. This Release is made for your benefit and all who succeed to your rights and responsibilities, such as your heirs or the executor of your estate.

4. **SIGNATURES.** I understand and agree to the terms of this Release.




DESIREE TORRUSIO

STATE OF NEW JERSEY, COUNTY OF SUSSEX SS:

I CERTIFY that on July 16, 2013, **DESIREE TORRUSIO**, personally came before me and acknowledged under oath, to my satisfaction, that she:

- (a) is named in and personally signed this document; and,
- (b) signed, sealed and delivered this document as her act and deed.

Witness



Notary Public *Todd Hookbell*
Attorney at Law
State of New Jersey