

In The  
Supreme Court of the United States

— ♦ —  
JEFFREY D. LEISER,

Petitioner,

v.

KAREN KLOTH, ET AL.,

Respondents.  
— ♦ —

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

— ♦ —  
**APPENDIX OF RESPONDENTS IN OPPOSITION**  
— ♦ —

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## RESPONDENTS' APPENDIX TABLE OF CONTENTS

Resp't. App.  
Page

*Jeffrey Leiser v. Karen Kloth, et al.*, No. 15-CV-768-slc  
(W.D. Wis. Oct. 4, 2019)

Psychological Services Clinical Contact Notes, Mar. 30, 2015 (Dkt. 27-1) .....	A001–A003
Defendants' Reply to Plaintiff's Response to Defendants' Proposed Findings of Fact (Dkt. 44) .....	B001–B030
Psychological Services Clinical Contact Notes, April 28, 2015 (Dkt. 31-7, 31-8).....	C001–C002
Plaintiff's Civil Suit (Dkt. 1).....	D001–D010
Opinion and Order, May 9, 2016 (Dkt. 8).....	E001–E010
Defendants' Brief in Support of Motion for Summary Judgment (Dkt. 22).....	F001–F014

## PSYCHOLOGICAL SERVICES CLINICAL CONTACT

PATIENT NAME (Last, First) LEISER, Jeffrey			SOURCES OF INFORMATION	
			<input checked="" type="checkbox"/> Clinical Interview	<input checked="" type="checkbox"/> PSU Record
			<input type="checkbox"/> Social Services File	<input type="checkbox"/> Medical Chart
			<input type="checkbox"/> Psychological Testing	<input type="checkbox"/> Other
DOC NUMBER 330229	FACILITY SCI	DATE OF SERVICE 10/02/14		

REASON FOR CONTACT  
Inmate written request.

### RELEVANT HISTORY

Inmate Leiser is coded MH-1. He has no mental health history prior to DOC, although there is some mention of psychotherapeutic treatment as an adolescent while in foster care. He does not have a history of suicide attempts or psychiatric hospitalizations. He is currently on psychotropics to manage his anxiety and irritability and is serving his 2nd period of adult incarceration for 1st Degree Sexual Assault of a Child.

### CLIENT REPORT

Inmate reported he recently received treatment at a Pain Clinic. Allegedly, the MRI shows he is experiencing pain. This upsets him as he feels HSU at SCI do not take his complaints seriously. He received a shot to help him manage his pain. He discussed his feelings about his children and towards certain staff. He stated, "why does it always have to be about feelings" making references to PTSD and how staff interactions occasionally invoke flashbacks. He noted his current cellmate helps him to remain motivated and calm. He stated he doesn't trust himself or others and that he believes he has attachment issues from childhood. He has dreams where he is violent and murderous and this concerns him.

### MENTAL STATUS

Inmate was alert and oriented to person, place, time, and situation. He was polite and cooperative. Hygiene and grooming appropriate and within normal limits. Inmate mood euthymic, affect congruent to mood and full-range. He smiled occasionally. Eye contact maintained. No psychomotor agitation or retardation. Speech normal in rate, rhythm, and tone. No deficits in memory or attention. He denied problems with sleep or appetite. He made no mention of suicidal or homicidal ideation/behavior. No signs of psychosis present or reported. His thoughts were well ordered. He was future-oriented.

### DIAGNOSES

Adjustment Disorder with Mixed Emotional Mood  
Antisocial Personality Disorder

### IMPRESSIONS (include rationale for any change in diagnosis or MH code)

The therapeutic relationship appears to be developing in a positive way. Inmate is able to describe his symptoms and beliefs well, however, it is unclear how rigid he will be when working to change some of his values that cause him distress. He also has a significant external focus which appears to be holding him back from progressing.

### TREATMENT PLAN / FOLLOW-UP

Treatment goal is to work on anger. It is unclear how cooperative Inmate will be as he presents as rigid in his beliefs. Set goal for number of sessions needed. He will write for next appointment. Clinically monitor.

CLASSIFICATION CHANGE ☐ Yes ☒ No

MENTAL HEALTH CLASSIFICATION (SMI = seriously mentally ill) <input type="checkbox"/> MH-0 No MH need <input checked="" type="checkbox"/> MH-1 MH need, not SMI <input type="checkbox"/> MH-2a SMI <input type="checkbox"/> MH-2b SMI - PD			SPECIAL CLASS <input type="checkbox"/> ID
PSU STAFF SIGNATURE <i>N. Kaeppler, CSW, LPCIT</i>	PRINT PSU STAFF NAME N Kaeppler, CSW, LPCIT	DATE SIGNED 10-21-14	
SUPERVISOR'S SIGNATURE (If Needed) <i>[Signature]</i>	PRINT SUPERVISOR'S NAME Dr. J. Frey, Licensed Psychologist Psychological Services Unit Supervisor	DATE SIGNED 2-19-15	

Page 1 of 1

DISTRIBUTION: Original - PSU Record, Referrals/Screening/Contact Section, Copy - Medical Chart, Psychological Records (Copies) Envelope,  
Copy- Social Services File, Confidential Envelope

- 0002  
Resp. App. A001

DEPARTMENT OF CORRECTIONS  
Division of Adult Institutions  
DOC-3473 (Rev 1/2014)

WISCONSIN

**PSYCHOLOGICAL SERVICES CLINICAL CONTACT**

PATIENT NAME (Last, First) LEISER, Jeffrey			SOURCES OF INFORMATION	
			<input checked="" type="checkbox"/> Clinical Interview	<input checked="" type="checkbox"/> PSU Record
			<input type="checkbox"/> Social Services File	<input type="checkbox"/> Medical Chart
			<input type="checkbox"/> Psychological Testing	<input type="checkbox"/> Other
DOC NUMBER 330229	FACILITY SCI	DATE OF SERVICE 03/30/15		

REASON FOR CONTACT  
Scheduled Counseling.

**RELEVANT HISTORY**

Inmate Leiser is coded MH-1 He has no mental health history prior to DOC, although there is some mention of psychotherapeutic treatment as an adolescent while in foster care. He does not have a history of suicide attempts or psychiatric hospitalizations. He is currently on psychotropics to manage his anxiety and irritability and is serving his 2nd period of adult incarceration for 1st Degree Sexual Assault of a Child.

**CLIENT REPORT**

Inmate stated he has been trying to wean himself off his medications and is unhappy with the new medication distribution policy. He referenced his fear of having people behind him due to childhood trauma, and his belief that his anxiety would overpower him when waiting in line for the meds in HSU He stated, "I'm just trying to look out for myself". Because he has been taking less of his meds he has been feeling "weak, sweaty and shitty". He also has written Madison about a staff member who gave him a directive he believes is not true. This writer went over flashback literature with him, and he began to describe how he experiences his flashbacks. He denied experiencing any audio when having a flashback to his trauma. He stated they are primarily visual and lead to feels of sadness, anger and fear. He also acknowledged having nightmares.

**MENTAL STATUS**

Inmate was alert and oriented to person, place, time, and situation He was polite and cooperative. Hygiene and grooming appropriate and within normal limits. Inmate mood generally euthymic and appropriate for topics discussed. Affect congruent to mood and full-range. Eye contact was maintained throughout interview. Psychomotor activity WNL. Speech normal in rate, rhythm, and tone. No deficits in memory or attention He denied problems with sleep or appetite. He did admit to having thoughts of suicide on a regular basis, with no plan or intent. No signs of psychosis present or reported. His thoughts were well ordered. He was future-oriented.

**DIAGNOSES**

Adjustment Disorder with Mixed Emotional Mood  
Unspecified Personality Disorder  
PTSD

**IMPRESSIONS (include rationale for any change in diagnosis or MH code)**

Inmate is very upset over new medication distribution policy. His plan to decrease his medications is resulting in side effects. He was encouraged to discuss further with Dr. Luxford before continuing this practice. He is motivated to continue work on flashbacks and continue discussing how his trauma and crimes impacted how he views women. After thorough assessment of symptoms, his reports are consistent with a diagnosis of PTSD I will assign this accordingly after consultation with Dr. Frey.

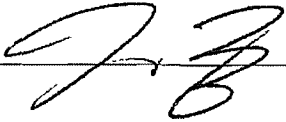
**TREATMENT PLAN / FOLLOW-UP**

F/U 2 5 weeks. Continue work on flashbacks with help of PTSD manual.

CLASSIFICATION CHANGE ☐ Yes ☒ No

<b>MENTAL HEALTH CLASSIFICATION (SMI = seriously mentally ill)</b> <input type="checkbox"/> MH-0 No MH need <input checked="" type="checkbox"/> MH-1 MH need, not SMI <input type="checkbox"/> MH-2a SMI <input type="checkbox"/> MH-2b SMI - PD			SPECIAL CLASS <input type="checkbox"/> ID
PSU STAFF SIGNATURE <i>N. Kaeppler, CSW, LPCIT</i>	PRINT PSU STAFF NAME N. Kaeppler, CSW, LPCIT	DATE SIGNED	

SUPERVISOR'S SIGNATURE (If Needed)



PRINT SUPERVISOR'S NAME

Dr. J. Frey, Licensed Psychologist  
Psychological Services Unit Supervisor

DATE SIGNED

4-13-15

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Copy- Social Services File, Confidential Envelope

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

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JEFFREY D. LEISER,

Plaintiff,

v.

Case No. 15-cv-768-slc

KAREN KLOTH, et al.,

Defendants.

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**DEFENDANTS' REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANTS'  
PROPOSED FINDINGS OF FACT**

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Defendants, Karen Kloth, Paula Stoudt, and Reed Richardson, by their attorneys, Attorney General Brad D. Schimel and Assistant Attorney General Rachel L. Bachhuber, submit these replies to Plaintiff's response to Defendants' proposed findings of fact in support of their motion for summary judgment, as follows:

**PROPOSED FINDINGS OF FACT**

**Parties**

1. Jeffrey Leiser (Leiser) is an inmate in the custody of the Wisconsin Department of Corrections (Corrections) housed at the Stanley Correctional Institution (Stanley) at the time relevant to his claims. (Dkt. 1, Pl.'s Compl.)

**RESPONSE:** Fact, Jeffrey Leiser was an inmate at Stanley Correctional Inst. (SCI) at all times relevant to his claims against defendants. Leiser is now housed at New Lisbon Correctional Institution. (NLCI)

**REPLY:** Undisputed.

2. At all times relevant to this matter, Karen Kloth (Kloth) was employed by Corrections as Correctional Sergeant at Stanley, whose responsibilities included, but were not limited to, supporting unit staff, maintaining security of the institution, safety of inmates on the unit and performing general tasks within the various housing units. (Kloth Decl., ¶¶ 2, 3)

**RESPONSE:** Fact, at all times relevant to this matter, Karen Kloth was employed by corrections as correctional sergeant at SCI whose responsibilities included, but were not limited to supporting staff and performing general task. DISPUTE, maintaining security of the institution, safety of inmates on the units and within the various housing units. Kloth is a security risk to all inmates and staff. “She extremely failed.” Kloth’s appearance in any part of SCI caused staff and inmates mental stress and chaos amongst all inmates and staff. It was Kloth’s “habit” to harass inmates.

**REPLY:** The defendants object because the plaintiff cites no evidentiary material in support of this proposition. The court should not consider this proposed fact. Fed. R. Civ. P. 56(e) and *Procedures to be Followed on Motions for Summary Judgment* II(C) and (E). The Court should disregard Leiser’s additional argumentative and conclusory allegations and deem this proposed fact undisputed.

3. At all times relevant to this matter, Paula Stoudt (Stoudt) was employed by Corrections as a Corrections Unit Supervisor (Unit Manager) at Stanley in Unit 1 with the responsibilities, under the general supervision of the warden/deputy warden, for the security, treatment, and general living conditions of all inmates assigned to the units. (Stoudt Decl., ¶¶ 2, 3)

**RESPONSE:** Dispute, at all times relevant to this matter Stoudt was employed by corrections as a corrections unit manager at SCI Unit 1,... for the security, treatment and general living conditions of all inmates assign assigned to the unit. Stoudt allowed Kloth the continue to harass Leiser every time Kloth was assigned to unit 1 as sergeant. Stoudt knew from Leiser Kloth harassed him by standing behing him, therefore failing in her responsibilities to protect inmates from harm. (See PPFOF ¶ 3. Plaintiff Decl., ¶ 30)

**REPLY:** The Defendants object to the purported dispute because the cited evidentiary material does not sufficiently dispute the proposed fact. It is conclusory and argumentative. The Court should deem the proposed fact undisputed.

4. At the times relevant to this complaint, Reed Richardson (Richardson) was employed by Corrections as the Warden at Stanley and is responsible for the overall administration and operation of Stanley. (Richardson Decl., ¶¶ 2, 3)



**RESPONSE:** Fact, Richardson is employed by corrections as warden of SCI and responsible for the overall administrative, (hiring & firing) and operations of SCI.

**REPLY:** Undisputed.

5. At all times relevant to this matter, Jesse Frey, Psy.D., (Dr. Frey) was employed by Corrections as the Psychological Supervisor at Stanley with the general responsibilities of oversight of the treatment of mental ill offenders in the Wisconsin Department of Corrections. (Frey Decl., ¶¶ 2, 3)

**RESPONSE:** Disputes, Leiser disputes that Dr. Frey has any input into this case. He was not Leiser's Psychologist that seen Leiser. Leiser OBJECTS to Frey being part of this case. No Motion of Expert was filed with Leiser to use Frey's "Opinion" as to the incomplete records kept by Ms. Kaeppler Leiser's Psychologist who seen Leiser. These records do not reflect the entire conversations Leiser had with Kaeppler about the matter in this case. Kaeppler never used Kloths name. It is only fair to Leiser that if the defendants wasn't to use evidence from Leiser's Psychologist file against him, it must be from the clinician that evaluated Leiser and spoke with Leiser during his time at SCI. Not a supervisor that only gets part of the conversations in short hand by Kaeppler! (See PPFOF ¶ 11. Plan Decl., ¶ 4)

**REPLY:** The Defendants object to the purported dispute because the cited evidentiary material doesn't sufficiently dispute the proposed fact. The Court should deem it undisputed.

**Psychological Services Treatment and Care of Leiser**

6. Dr. Frey is the Psychological Supervisor at Stanley and supervised the treatment provided to Leiser by Nichole Kaeppler at Stanley at all times relevant to this matter. (Frey Decl., ¶ 7)

**RESPONSE:** Fact. Frey is the supervisor of all psychological staff at SCI.

**REPLY:** Undisputed.

7. Unit security staff are generally not informed of an inmate's clinical diagnosis. (Frey Decl., ¶ 8; Kloth Decl., ¶ 22; Stoudt Decl., ¶ 7)

**RESPONSE:** Dispute. unit security staff are generally not informed of inmates clinical diagnosis. Dispute that do to the fact that Unit 1 is a mental health unit, the staff are trained on how to deal with mentally ill inmates just because PSU does not given them a direct diagnosis of the inmate, does not mean they don't know they have a mental illness. (See PPFOF ¶ 22. Plan Decl., ¶ 16)

**REPLY:** The Defendants object because the cited evidentiary material does not sufficiently dispute the proposed fact and the Court should deem it undisputed.

8. If a special accommodation is needed for that inmate, a treatment plan will be implemented and psychological services staff will inform unit security staff of symptoms, behavioral or emotional responses of that inmate and of any special accommodations needed to address the inmate's issues. (Frey Decl., ¶ 8; Kloth Decl., ¶ 22; Stoudt Decl., ¶ 7)

**RESPONSE:** Dispute, if a special accommodation is needed for the inmate, a treatment plan will be implemented and psychological services staff will inform unit security staff of symptoms, behavioral or emotional responses of the inmate and of any special accommodations needed to address the inmate's issues. DISPUTE, that Leiser did have a special accommodation from Dr. Luxford to receive his psych & pain medication inside the health service unit (HSU) handed out by a nurse instead of having Leiser stand in line with inmates behind him. Also if staff's regular posts is Unit 1, they know that the inmate suffers from some kind of mental illness. (See PPFOF ¶ 18. Plant Decl., ¶ 19, 24)

**REPLY:** The Defendants object to the purported dispute because the cited evidentiary material is inadmissible hearsay and none of the exceptions apply. Leiser failed to submit any certified medical record supporting his claim that Dr. Luxford gave him a special accommodation. The Court should disregard the Plaintiff's response and deem this proposed fact undisputed.

9. The inmate's symptoms, behavioral or emotional responses and any needed special accommodations are discussed at the multi-disciplinary meeting and then disbursed to unit security staff by their supervisors. (Frey Decl., ¶ 9; Kloth Decl., ¶ 22; Stoudt Decl., ¶ 7)

**RESPONSE:** Dispute, the inmates symptoms, behavioral or emotional responses and any needs special accommodation and discussed at the multi-disciplinary meeting and then disbursed to unit security staff by their supervisor. Disputes that they did make special accommodations for Leiser when they housed/staffed him on unit 1-A, the defendant nor Frey presented any evidence that they did not provide special accommodations for Leiser, when Leiser was given special accommodations by Luxford to receive his medications from a nurse inside HSU instead of standing in line with every other inmates. Making it impossible for anyone to stand behind Leiser. Leiser has housed on Unit 1-A since arriving at SCI in 2010. (See PPFOF ¶ 23. Plaintiff Decl., ¶ 19, 24)

**REPLY:** The Defendants object to the purported dispute because the cited evidentiary material is inadmissible hearsay and none of the exceptions apply. Leiser failed to submit any certified medical record supporting his claim that Dr. Luxford gave him a special accommodation. The Court should disregard the Plaintiff's response and deem this proposed fact undisputed.

10. Dr. Frey has reviewed excerpts of the clinical record of Jeffrey Leiser and found that on December 18, 2014, after Leiser disclosed some of his childhood trauma to Kaeppler during a clinical contact, Kaeppler made a plan to clinically monitor Leiser to rule out a diagnosis of PTSD. (Frey Decl., ¶¶ 5, 10)

**RESPONSE:** Dispute, Dr. Frey has reviewed excerpts of the clinical records of Leiser and found that on Dec 18, 2014, after Leiser disclosed some of his childhood trauma to Kaeppler during a clinical contact. Kaeppler made plans to clinically monitor Leiser to rule out a diagnosis of PTSD. DISPUTE that Dec 18, 2014 Kaeppler “FIRST” learned of his PTSD. IT WAS ON OCT 2<sup>nd</sup> 2014 according to Kaeppler’s clinical records contact Leiser stated “he stated, ‘why does it always have to be about feelings’ making references to PTSD, and how staff interaction occasionally invoke flash backs.” See PPFOF ¶ 10, DPFOF ¶¶ 10, 11, Frey Decl., ¶ 10, Plaintiff Decl., ¶ 10. Kaeppler did not put the entire conversation in writing she paraphrased the conversation with Leiser. Leiser should be allowed to put Kaeppler on the stand to ask why she failed to file a declaration as well as ask her why she didn’t write all of the conversations we had. (See also Defendant Ex 1005-0002) (PPFOF ¶ 11)

**REPLY:** The Defendants object because the cited evidentiary material does not sufficiently dispute the proposed fact, and the Court should deem it undisputed.

11. During this meeting, it was noted that Leiser related his trauma to his discomfort in having people at his back, as well as his refusal to trust others. (Frey Decl., ¶ 10)

**RESPONSE:** Dispute. During this meeting, it was noted that Leiser related his trauma to his discomfort in having people at his back, as well as his refusal to trust others. DISPUTE fact is Leiser informed Kaeppler on 10/2/14 of his childhood trauma being kncked out while talking to a blonde female at the age of 8 years old. Leiser informed Kaeppler that staff cannot stand behing him as Sgt Kloth does because it triggers his PTSD and Leiser seriously wants to hurt them. (See PPFOF ¶ 12. Plaintiff Decl., ¶ 6, DPFOF ¶ 10, ¶ 11) Leiser also disputes the wording used by Kaeppler. Leiser uses “stand behinds me” not at his back.

**REPLY:** The Defendants object because the cited evidentiary material does not sufficiently dispute the proposed fact and the Court should deem it undisputed.

12. After continued assessment of his symptoms, it was found that Leiser’s reports were consistent with a diagnosis of PTSD and this diagnosis was assigned on March 30, 2015. (Frey Decl., ¶ 11)

**RESPONSE:** Disputes after continued assessment of his symptoms it was found that Leiser report were consistent with a diagnosis of PTSD on March 30, 2015. Disputes Kaeppler first diagnosis Leiser with PTSD

on 2/5/15 (See Plaintiff Ex 3, PPFOF ¶ 13, Plaintiff Decl., ¶ 14) making Frey's statement on his declaration ¶ 11 false "diagnosis assigned on March 30, 2015." (See DPFOF ¶ 12. Frey Decl., ¶ 11) (PPFOF ¶ 14. Plaintiff Decl., ¶ 14)

**REPLY:** The Defendants object because the cited evidentiary material does not support the purported dispute. The Defendants further object because it is conclusory and argumentative. The cited psychological services clinical contact is not inconsistent with the proposed fact. On 2-5-15, Kaeppler indicated, "Consult with Dr. Frey about PTSD symptoms and determine if diagnoses appropriate to assign, dropping the R/O." (Dkt. 31-4.) The Court should deem the proposed fact undisputed.

13. During his assessment on March 30, Leiser referenced a fear of having people behind him due to childhood trauma, and his belief that his anxiety would overpower him when waiting in line for medication in the Health Services Unit. (Frey Decl., ¶ 11)

**RESPONSE:** Dispute, during his assessment on March 30, Leiser referenced a fear of having people stand behind him do to childhood trauma, and his belief that this anxiety would over power him when waiting in line for medication at HSU. Frey Decl., ¶ 11/ Disputes, that it wasn't on March 30, 2015, I referenced a fear of having people behind me on 10/2/14, while Leiser was with Kaeppler. Leiser informed her

“making reference to PTSD and how staff interactions invoked flash backs of his childhood trauma of being knocked out at 8 years old. That Kloth standing behind me triggered by PTSD! (PPFOF ¶ 10. Plaintiff Decl., ¶ 7 DPFOF ¶ 13, Frey Decl., ¶ 11)

**REPLY:** The Defendants object because the cited evidentiary material does not sufficiently dispute the proposed fact and the Court should deem it undisputed.

14. While Leiser had made statements of discomfort with having people behind him, he did not state specific examples of how officer staff standing or moving behind him triggered his PTSD. (Frey Decl., ¶ 12)

**RESPONSE:** Dispute while Leiser had made statements of discomfort with having people behind him, he did not state specific examples of how officer staff standing or moving behind him triggers his PTSD. DISPUTES Leiser told Kaeppler in his statement that having staff stand behind him triggers his flashbacks of someone in authority as the female and her male friends were to an 8 year old, knocked him out and severely raped him. That having staff & inmates behind Leiser triggers that memory and Leiser's desire to snap (hurt and kill them) because all he sees is them. (For the record Leiser does not use the wording “discomfort.”) (See PPFOF ¶ 3. Plaintiff Decl., ¶ 18)

**REPLY:** Disputed. But the dispute is immaterial for purposes of summary judgment.



15. To Dr. Frey's knowledge and based on his review of Leiser's clinical records, psychological services staff did not put a treatment plan in place regarding any accommodation needs for a PTSD diagnosis, particularly for staff not to stand behind him. (Frey Decl., ¶ 13; Stoudt Decl., ¶ 8)

**RESPONSE:** Disputes, Dr Freys knowledge, is based on his review of Leiser's clinical records, psycholoical service staff did not put a treatment plan in place regarding any accommodation needs for PTSD diagnosis, particularly for staff not to stand behind him. Disputes When Leiser informed Dr. Luxford the head psychiatrist at SCI of the problems Leiser has having in med line, Dr. Luxford made it so thaht Leiser could get his pshyc & pain medication inside health services unit. (See PPFOF ¶ 18. Plaint. Decl., ¶ 19)

**REPLY:** The Defendants object because the cited evidentiary material is inadmissible hearsay and none of the exceptions apply. Leiser points to no medical record as proof of any special accommodation. The Court should deem the proposed fact undisputed.

16. To Dr. Frey's knowledge and based on his review of Leiser's clinical records, unit security staff were not informed of Leiser's PTSD diagnosis nor were they informed not to stand or move behind Leiser because it triggered his PTSD. (Frey Decl., ¶ 14)

**RESPONSE:** Disputes, To Frey's knowledge and based on his review of Leiser's clinical records, unit security staff were not informed of Leiser's PTSD diagnosis nor where they informed not to stand behind or move behind Leiser because it triggers his PTSD. Disputes First Leiser's clinical records are incomplete, they are paraphrased by Kaeppler, Second, Dr Luxford accommodated Leiser's severe issue he was having in Medication line by allowing/ordering that Leiser receives his medication inside HSU and hand to him by a RN. Third, Leiser informed the regular unit 1\_a staff & Sergeant that Leiser had PTSD, and standing behind him would not be good for them, therefore the security staff that needed to know was informed by Leiser. (See PPFOF ¶ 22. Plaintiff. Decl., ¶¶ 19, 23, Leiser Declaration ¶ 6, Gorichs Aff ¶ 3)

**REPLY:** The Defendants object because the cited evidentiary material is inadmissible hearsay and none of the exceptions apply. Leiser points to no medical record as proof of any special accommodation. The Court should deem the proposed fact undisputed.

17. To state as part of a treatment plan that people cannot stand behind Mr. Leiser would be problematic in several ways. (Frey Decl., ¶ 15)

**RESPONSE:** Dispute to state as part of a treatment plan that people cannot stand behind Mr. Leiser would be problematic in several ways. Dispute. Leiser disputes Dr. Frey's Decl, ¶ 15 he states "...Psychologist

focus on internal changes not external changes, this is because we cannot change how others act or behave, and a person can only change how he or she behaves...” Isn’t an internal change helping Leiser reduce the trauma of people standing behind him? From being beaten half to death then sexually tortured because he allowed “unknowingly” this would happen to him at 8 years old. Isn’t it an internal change on how Leiser thinks, feels, or acts when someone triggers his trauma (PTSD)? Isn’t it the Psychologist’s job to help a person overcome his mental illness, fight, struggles, to help a person overcome his mental illness, to deal with the PTSD? It seems to Leiser that Dr. Frey is saying Leiser’s PTSD trauma of being knocked out cold, and sexually tortured by someone hitting him from behind is not an internal issue PSU is concerned about? (Plaint. Decl., 20-21)

**REPLY:** The Defendants object because the cited evidentiary material is conclusory and argumentative. Plaintiff lacks sufficient expertise to dispute the proposed fact. The Court should deem the proposed fact undisputed.

18. Psychologists focus on internal change not external change, this is because people cannot change how others act or behave; a person can only change how he or she behaves. (Frey Decl., ¶ 15)

**RESPONSE:** Disputes, Psychologist focus on internal changes not external changes. This is because people cannot change how others act

or behave; a person can only change how he or she behaves. Leiser Disputes that Leiser's mental illness & traumatic childhood of people standing behind him isn't internal it's a severe fear of someone hitting him over the head (attacking him) and rapping him. Dr Frey states that's not internal, WOW if that's not internal then what is?? Leiser's internalness of not having a "malicious & vindictive person" Kloth purposely trigger Leiser's PTSD is something Psychologist should address. (Plaint. Decl., 21)

**REPLY:** The Defendants object because the cited evidentiary material is conclusory and argumentative. Plaintiff lacks sufficient expertise to dispute the proposed fact. The Court should deem the proposed fact undisputed.

19. Saying that people cannot stand behind Leiser would not be addressing the mental health issue and would be a set up for failure, since Stanley is a densely populated correctional facility. (Frey Decl., ¶ 15)

**RESPONSE:** Dispute saying that people cannot stand behind Leiser would not be addressing the mental health issue and would be a set up for failure, since Stanley is a densely populated correctional facility. Leiser Disputes not having Kloth an other staff and inmates "perposefully, willfully, intentionally," standing behind him to trigger severely bad thoughts of violence and torture is most deffenitly a set-up

to fail, as well as threatens staff and inmates health & safety. (PPFOF ¶ 23. Plaint. Decl., ¶ 25)

**REPLY:** The Defendants object because the cited evidentiary material does not sufficiently dispute the proposed fact. It is conclusory and argumentative. The Court should disregard it and deem the proposed fact undisputed.

20. A populated environment such as Stanley would make it very difficult, if not impossible, to avoid someone standing behind Leiser. (Frey Decl., ¶ 15)

**RESPONSE:** Disputes That the population environment such as Stanley would make it difficult if not impossible, to avoid someone standing behind Leiser. Disputes, the defendants fail to understand that this is about Kloth purposely standing behind Leiser to trigger his PTSD. To harass Leiser and cause him mental harm. To trigger Leiser into violent acts against others, and himself. Leiser works hard to keep staff & inmates from triggering his PTSD. Kloth does it on purpose to get a kick out of it. To say it would make it difficult if not impossible, shows Frey's lack of knowledge between someone with no intent "vs" Kloth's intentionally setting off Leiser's PTSD to get a kick out of it. (PPFOF ¶ 24. Plaint. Decl., ¶ 25, Leiser's Decl ¶ 17 Ex 28, Gorichs Aff. ¶ 5 Ex. 5)

**REPLY:** The Defendants object because the cited evidentiary material does not sufficiently dispute the proposed fact. It is

conclusory and argumentative. The Court should disregard it and deem the proposed fact undisputed.

21. It is Dr. Frey's opinion, to a reasonable degree of clinical certainty based on his review of Leiser's clinical records and Dr. Frey's interactions with him that Leiser did not need an accommodation directive precluding Stanley security staff from standing or moving behind him. (Frey Decl., ¶ 16)

**RESPONSE:** DISPUTE, it is Freys opinion, to a reasonable degree of clinical certainty based on his review of Leiser's clinical records and Dr Freys interaction with him that Leiser did not directive precluding SCI security staff from standing or moving behind him. DISPUTES, is the lack of clinical records of half written meetings of whats said between psychologist and inmate, the fact that Frey wouldplace his opinion as a reasonable degree of clinical certainty based on the 3 or 4 times he met with Leiser, and the certainty of providing no evidence that staff didn't know of Leiser's PTSD. Leiser has been dealing with this PTSD for many, many years. Leiser informed first & second shift staff that he suffers from PTSD and asked them to please not stand behind him. Leiser explained that he did not want to hurt anyone. All staff except Kloth respected that mental issue. (PPFOF ¶ 16. Plaint. Decl., ¶ 28, L. Leiser's Decl ¶ 19 Gorichs Aff. ¶ 5 Sekola Aff ¶ 4) Leiser personally informed Unit Manager Stoudt while in unit 1-A as well in Social Worker C. Andersons Office. (PPFOF ¶ 60. Plaint. Decl., ¶ 56)

**REPLY:** The Defendants object because the cited evidentiary material does not sufficiently dispute the proposed fact. It is conclusory and argumentative, as well as inadmissible hearsay. The Court should disregard it and deem the proposed fact undisputed.

**Karen Kloth**

22. Kloth had no knowledge of Leiser's allegations that he had PTSD or that standing behind him triggered his PTSD prior to Leiser filing this lawsuit. (Kloth Decl., ¶ 20)

**RESPONSE:** Disputes, Kloth had no knowledge of Leiser's allegations that he had PTSD or that standing behind him triggered his PTSD prior to Leiser filing this lawsuit. Disputes that Kloth did know. Leiser told Kloth several times while housed in Unit 1-A while she was the surrogate. Leiser asked her in front of his brother Loren Leiser #353252, Terry Gorichs #68251, Robert Sekola #485956, L. Leiser's Decl. ¶ 19. Which all have provided Leiser with affidavits enclosed stating that Leiser asked Kloth not to stand behind me because of my PTSD. Kloth stated I can stand where ever I want too. Leiser informed her that he would not be responsible for his actions. Kloth just laughed and walked away. Kloth was informed many times by Leiser and his brother Loren Leiser not to stand behind him. (PPFOF ¶ 9. Plaint. Decl., ¶ 5, Leiser's Decl ¶ 16, Gorichs Aff. ¶ 5, Sekola Aff ¶ 4.)

**REPLY:** The Defendants object because the cited evidentiary material does not support portions of the response. Neither Gorichs's, nor Sekola's, declarations say that Leiser told Kloth not to stand behind him because of his PTSD. In addition, none of the declarations contain any dates as to any conversations with Kloth about Leiser's PTSD. Finally, Kloth need not believe the statements of the other inmates about Leiser's PTSD symptoms. *See Riccardo v. Rausch*, 375 F.3d 521, 528 (7th Cir. 2004) ("The constitutional question is not what Riccardo (initially) said, but what Rausch actually believed. Some prisoners are manipulative, some are mistaken, and some are not only honest but also accurate. The Constitution does not oblige guards to assume (on pain of absolute liability if an assault later occurs) that all prisoners are in the third category; *Farmer* articulates a different, and more demanding, standard, preserving room for both independent judgment and honest mistake on the guards' part.)

23. Kloth did not have any conversations with Leiser regarding this issue nor did she receive any correspondence or complaints from Leiser alleging that he had PTSD and that standing behind him would trigger his PTSD. (Kloth Decl., ¶ 20)

**RESPONSE:** Dispute Kloth did not have any conversation with Leiser regarding this issue nor did she receive any correspondence or complaints from Leiser alleging that he had PTSD and that standing



behind him would trigger his PTSD. Dispute, Leiser has several witnessess that will testify that Kloth would perposely stand behind him and laugh. Kloth was told by myself, Loren Leiser, with Gorichs & Sekola while they sat at Leiser's table eating dinner. Kloth would stand behind Leiser and he had to get up and walk away before he snipped and hurt Kloth with the violent thoughts and images in my head. (PPFOF ¶ 8. Plaint. Decl., ¶ 27, Gorichs Aff. ¶ 4, Sekola ¶ 3, Leiser's Decl ¶ 19)

**REPLY:** The Defendants object because the cited evidentiary material does not support portions of the response. Neither Gorichs's, nor Sekola's, declarations say that Leiser told Kloth not to stand behind him because of his PTSD. In addition, none of the declarations contain any dates as to any conversations with Kloth about Leiser's PTSD. Finally, Kloth need not believe the statements of the other inmates about Leiser's PTSD symptoms. *See Riccardo*, 375 F.3d at 528.

24. Kloth was not informed by psychological services unit staff that Leiser had PTSD nor was she aware of any accommodation issued to Leiser for staff not to stand behind him due to a diagnosis of PTSD. (Kloth Decl., ¶ 22)

**RESPONSE:** Disputes, Kloth was not informed by psychological services unit with staff that Leiser had PTSD or aware of accommodations issued for staff not to stand behind him due to PTSD.

Disputes regardless is PSU informed Kloth or had an accommodation issued. Leiser informed Kloth several times that he had PTSD and not to stand behind him. It was Leiser's belief that Unit Manager Stoudt would do her job after Leiser told her about the harassment by Kloth, while in the dayroom, in front of Gorichs, and Sekola. Stoudt told Leiser she would take care of it. Yet it never stopped Kloth from harassing him. (PPFOF ¶ 20. Plaint. Decl., ¶ 8, Gorichs Aff. ¶ 12)

**REPLY:** The Defendants object because the cited evidentiary material does not sufficiently dispute the proposed fact and the Court should deem it undisputed.

25. At times, during Kloth's regular rounds in the day room or the cafeteria, Kloth would need to move behind or stand behind inmates, including Leiser, while monitoring the activities of the inmates on the unit. (Kloth Decl., ¶ 23)

**RESPONSE:** Disputes, At times during Kloths regular rounds in the dayroom or the cafeteria, Kloth would need to move behind or stand behind inmates, including Leiser, while monitoring the activities of the inmate on the units. Disputes Leiser disputes if Kloth had anything to do with this DPFOF. Kloth would know that the dayroom is where inmates eat all meals, there is no cafeteria! Secondly, staff can see the entire dayroom from the sergeants desk and all the inmates in it. Thirdly Kloth could walk right down the middle of the dayroom, she did not have to stand behind anyone at any time. (PPFOF ¶ 26. Plaint. Decl.,

¶ 26) It should be noted that staff never have to stand behind inmates if they are not violating any rules.

**REPLY:** The Defendants object to the response as conclusory and argumentative. The Court should deem the proposed fact undisputed.

26. At no time did Kloth stand behind Leiser in an attempt to harass Leiser. (Kloth Decl., ¶ 23)

**RESPONSE:** Disputes, at no time did Kloth stand behind Leiser in an attempt to harass Leiser. Disputes. Kloth is a liar, Leiser has asked her several times not to stand behind Leiser, my brother Loren Leiser has asked Kloth not to stand behind him. Stoudt was told by Leiser that Kloth was harassing me and triggering my PTSD. Stoudt said she would take care of it. Yet Kloth continued to do it. Leiser informed PSU Kaeppler on 10/2/14 Ex 1, 12/18/14 Ex 2, 3/12/15 Ex 3, 3/27/15 Ex 4, Dr. Luxford 3/30/15 Ex 5, 6/3/16 Ex 19, 6/16/16 Ex 10, 4/28/15 Ex 5) If PSU Kaeppler did not do her job and inform Dr. Frey of this on going mental abuse by Kloth, then thats is an absolute breach of duty by Kaeppler. (PPFOF ¶ 28. Plaint. Decl., ¶ 8, 13)

**REPLY:** The Defendants object because the cited evidentiary material does not sufficiently dispute the proposed fact and the Court should deem it undisputed.

27. Kloth's movement was solely due to her duties as a correctional sergeant in monitoring the activities and actions of the inmates on the unit. (Kloth Decl., ¶ 23)

**RESPONSE:** Disputes, Kloths movement was solely due to her duties as a correctional sergeant in monitoring the activities as actions of the inmates on the unit. WRONG! Kloths standing directly behind Leiser is not "movment" nor is it her duty to stand directly behind Leiser. It is Clear that Leiser has not filed any complaints against any other DOC/SCI employee for standing directly behind Leiser. WHY, because they understood Leiser had a mental illness. Kloths duty was movement not standing directly behind Leiser. There is no penological interest in Kloth standing directly behind Leiser or any inmate. (PPFOF ¶ 8. Plaintiff. Decl., ¶ 8, 9)

**REPLY:** The Defendants object because the cited evidentiary material does not sufficiently dispute the proposed fact. The Court should deem it undisputed.

**Paula Stoudt**

28. Leiser did not make any complaints to Stoudt that Kloth was attempting to trigger his PTSD by standing behind him. (Stoudt Decl., ¶ 9)

**RESPONSE:** Dispute Leiser did inform/complain to Stoudt about Kloth triggering his PTSD. However, Stoudt took it as Leiser generally

complaining about Kloth! (PPFOF ¶ 31. Plaint. Decl., ¶ 30, Gorichs Aff. ¶ 12)

**REPLY:** The Defendants object because the cited evidentiary material does not sufficiently dispute the proposed fact and the Court should deem it undisputed.

29. Nor, to the best of her recollection and review of her records, did Stoudt receive any correspondence or written complaints from Leiser alleging that he had PTSD or that Kloth was harassing him by standing behind him to trigger his PTSD. (Stoudt Decl., ¶ 6)

**RESPONSE:** FACT AND DISPUTE, nor to the best of her recollection and review of her records did Stoudt receive any correspondence or written complaints from Leiser alleging that he had PTSD or that Kloth was harassing him by standing behind him to trigger his PTSD. DISPUTES Leiser informed Stoudt that Kloth was harassing him and triggering his PTSD while Leiser was in the Social Workers Office Ms. Anderson on 1-B. (PPFOF ¶ 30. Plaint. Decl., ¶ 56)

**REPLY:** The Defendants object because the cited evidentiary material does not sufficiently dispute the proposed fact and the Court should deem it undisputed.

30. These complaints usually involved Leiser complaining about Kloth's enforcement of the rules of the institution. (Stoudt Decl., ¶ 9)

**RESPONSE:** DISPUTES, these complaints usually involved complaining about Kloths enforcement of the rules of the institution. DIPUTES, Leiser complained to Stoudt about Kloth harassing him on several occasions in front of Ms. Anderson, Gorichs, about Kloth standing directly behind me and how it triggered his PTSD and I informed her that I will not be held responsible for my actions if she gets hurt. (PPFOF ¶ 31. Plaint. Decl., ¶ 56, Gorichs ¶ 5)

**REPLY:** The Defendants object because the cited evidentiary material does not sufficiently dispute the proposed fact and the Court should deem it undisputed.

**Warden Reed Richardson**

31. Richardson had no knowledge of Leiser's allegations that Kloth attempted to trigger Leiser's PTSD by standing behind him. (Richardson Decl., ¶6 )

**RESPONSE:** Disputes Richardson did not have any conversation with Leiser regarding this issue. DISPUTES, Leiser had several conversations with Richardson about Kloths harassment of inmates and myself outside unit 1 as well as at HSU in the medication line, when Richardson made his rounds from unit to unit. Richardson told me & other inmates he would look into it. Leiser submitted a letter to Richardson "stating, Warden Richardson, I am writing to you today to file a complaint against Kloth under DAI 310.00.01 Staff Misconduct Conduct. I suffer from PTSD and I have asked Sgt Kloth not to stand behind me, because it

triggers my PTSD. Kloths response was I can stand anywhere I want too. Kloth has done this several times.” I have enformed PSU and UM Stoudt about this and the two seems as if they do not care. I’m complaining to you sir, because I will not be responsible for my actions against Sgt Kloth is she continues to trigger my PTSD. I respectfully ask you to order her to stop harassing me. I also request that she be fired. Kloth is a security risk to both inmates and staff. (PPFOF ¶ 32. Plaint. Decl., ¶ 66, Plaint Ex 11) Richardson never answered Leisers letter of complaint.

**REPLY:** Disputed, but the dispute is immaterial for purposes of summary judgment because Leiser wasn’t diagnosed with PTSD on the date he claims he sent Richardson the letter. (Frey Decl., Ex. 1005:9-12.)

32. Richardson did not have any conversations with Leiser regarding this issue nor did he receive any correspondence or complaints from Leiser alleging that Kloth was harassing him by standing behind him trigger his PTSD. (Richardson Decl., ¶6 )

**RESPONSE:** DISPUTES, Richardson did not have any conversation with Leiser regarding this issue nor did he receive any corresponence or complaints from Leiser alleging that Kloth was harassing him by standing behind him triggering his PTD. DISPUTES, Leiser seen Richardson doing rounds several times and expressed his concern with Kloth harassing him and his PTSD. Leiser sent Richardson a written

Complaint Dated 10/4/14 addressed to Richardson at SCI. Richardson never responded to Leiser's complaint. (PPFOF ¶ 33. Plaint. Decl., ¶ 66, Plaintiff Ex 11)

**REPLY:** Disputed, but the dispute is immaterial for purposes of summary judgment because Leiser wasn't diagnosed with PTSD on the date he claims he sent Richardson the letter. (Frey Decl., Ex. 1005:9-12.)

33. As part of Richardson's duties, he acted as the Reviewing Authority on complaints filed by inmates at the Stanley Correctional Institution. (Richardson Decl., ¶ 10)

**RESPONSE:** FACT Richardson was the Inmate complaint reviewer at SCI as part of his duties.

**REPLY:** Undisputed.

34. Richardson has no knowledge of any complaints filed by Leiser alleging Kloth was harassing him by standing behind him trigger his PTSD. (Richardson Decl., ¶ 11)

**RESPONSE:** DISPUTES. Richardson had no knowledge of Kloth harassing him or triggering his PTSD Leiser wrote him on 10/4/14 informing him Richardson failed to respond. (PPFOF ¶ 32. Plaint. Decl., ¶ 66, Plaintiff Ex 11)

**REPLY:** Disputed, but the dispute is immaterial for purposes of summary judgment because Leiser wasn't diagnosed with



PTSD on the date he claims he sent Richardson the letter. (Frey Decl., Ex. 1005:9-12.)

35. Richardson had no knowledge nor did he have any reason to believe that Kloth was harassing Leiser by attempting to trigger his alleged PTSD by standing behind him. (Richardson Decl., ¶ 22)

**RESPONSE:** Disputes. Richardson was informed by Leiser's written Complaint that Kloth harassed him and he had investigated Leiser's ICE as his job duties requires as ICE Reviewer he would have known Kloth was harassing Leiser. Had he responded to Leiser's written complaint filed 10/4/14, and investigated it, Leiser would not have been tortured by Kloth's mental abuse.

**REPLY:** Disputed, but the dispute is immaterial for purposes of summary judgment because Leiser wasn't diagnosed with PTSD on the date he claims he sent Richardson the letter and the complaint Leiser references alleged harassment by lying on tickets, providing false information and lying to superiors. Leiser did not allege that Kloth was attempting to trigger his PTSD by standing behind him in the complaint. (Richardson Decl., ¶¶ 14-15, 17; Ex. 1004; Frey Decl., Ex. 1005:9-12.)

36. The first time Defendants' became aware of Leiser's complaint that he had PTSD and that Kloth was harassing Leiser by standing behind him in an attempt

to trigger his PTSD was in their review of Leiser's civil complaint filed with the court in this case. (Kloth Decl., ¶ 21; Stoudt Decl., ¶ 5; Richardson Decl., ¶ 6)

**RESPONSE:** Dispute, Leiser disputes the first time the defendants were aware of Leiser's complaint that Kloth was harassing him by standing behind him was in his civil complaint to this court. Leiser informed Stoudt after he informed PSU Kaeppler on 10/2/14, and Stoudt after that, as well as Richardson on 10/4/14. Leiser states they are lying to protect themselves from this suit. They know what Kloth is doing and failed to do anything about it! (PPFOF ¶ 34. Plaint. Decl., ¶ 55)

**REPLY:** Disputed, but immaterial.

Dated this 14<sup>th</sup> day of July, 2017.

Respectfully submitted,

BRAD D. SCHIMEL  
Wisconsin Attorney General

s/ Rachel L. Bachhuber  
RACHEL L. BACHHUBER  
Assistant Attorney General  
State Bar #1052533

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DEPARTMENT OF CORRECTIONS  
Division of Adult Institutions  
DOC-3473 (Rev. 1/2014)

WISCONSIN

## PSYCHOLOGICAL SERVICES CLINICAL CONTACT

PATIENT NAME (Last, First) LEISER, Jeffrey			SOURCES OF INFORMATION	
			<input checked="" type="checkbox"/> Clinical Interview	<input checked="" type="checkbox"/> PSU Record
			<input type="checkbox"/> Social Services File	<input type="checkbox"/> Medical Chart
			<input type="checkbox"/> Psychological Testing	<input type="checkbox"/> Other
DOC NUMBER 330229	FACILITY SCI	DATE OF SERVICE 04/28/15		
REASON FOR CONTACT <del>Inmate written request</del> <i>Scheduled Counseling</i>				
RELEVANT HISTORY Inmate Leiser is coded MH-1. He has no mental health history prior to DOC, although there is some mention of psychotherapeutic treatment as an adolescent while in foster care. He does not have a history of suicide attempts or psychiatric hospitalizations. He is currently on psychotropics to manage his anxiety and irritability and is serving his 2nd period of adult incarceration for 1st Degree Sexual Assault of a Child.				
CLIENT REPORT Inmate stated he is hopeful for his morning medication to be changed to noon so he may attend HSU rec. He says HSU is encouraging him to lose weight so that his pain lessens on his back. He has begun working out more, which has proven to be beneficial in multiple ways. Not only is it good for his health, but he is able to get some of his anger out through exercise. This writer encouraged him to work on an internal focus of control, as much of his frustration that leads to anger stems from interactions with staff (external focus). The remainder of interview was spend on working on internal dialogue and treatment materials he previously completed.				
MENTAL STATUS Inmate was alert and oriented to person, place, time, and situation. He was polite and cooperative. Hygiene and grooming appropriate and within normal limits. Inmate mood euthymic, affect congruent to mood and full-range. Eye contact was maintained throughout interview. Psychomotor activity WNL. Speech normal in rate, rhythm, and tone. No deficits in memory or attention. He denied problems with sleep or appetite. He made no mention of suicidal or homicidal ideation/behavior. No signs of psychosis present or reported. His thoughts were well ordered. He was future-oriented.				
DIAGNOSES Adjustment Disorder with Mixed Emotional Mood Unspecified Personality Disorder PTSD				
IMPRESSIONS (include rationale for any change in diagnosis or MH code) Inmate was more receptive today to suggested interventions. He stated, "you've given me a lot to think about". He seems to be calmer and despite his continued focus on staff, the degree has lessened.				
TREATMENT PLAN / FOLLOW-UP Inmate given assignment of engaging in countering self-talk statements for 21 days. At the end of two weeks, he will write for a new appointment. Re-schedule accordingly.				
CLASSIFICATION CHANGE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
MENTAL HEALTH CLASSIFICATION (SMI = seriously mentally ill) <input type="checkbox"/> MH-0 No MH need <input checked="" type="checkbox"/> MH-1 MH need, not SMI <input type="checkbox"/> MH-2a SMI <input type="checkbox"/> MH-2b SMI - PD				SPECIAL CLASS <input type="checkbox"/> ID
PSU STAFF SIGNATURE <i>N. Kaeppler, CSW, LPCIT</i>		PRINT PSU STAFF NAME N. Kaeppler, CSW, LPCIT		DATE SIGNED 04/28/15
SUPERVISOR'S SIGNATURE (If Needed) <i>[Signature]</i>		PRINT SUPERVISOR'S NAME Dr. J. Frey, Licensed Psychologist Psychological Services Unit Supervisor		DATE SIGNED 5-13-15

Page 1 of 1

DISTRIBUTION: Original - PSU Record, Referrals/Screening/Contact Section, Copy - Medical Chart, Psychological Records (Copies) Envelope,  
Copy- Social Services File, Confidential Envelope

Exhibit

Resp. App. 0001

DEPARTMENT OF CORRECTIONS  
Division of Adult Institutions  
DOC-3659 (8/2011)

# MENTAL HEALTH BRIEF NOTES

WISCONSIN

PATIENT NAME (Last, First, MI) DOC NUMBER MH-CODE UNIT FACILITY NAME

LEISER, Jeffrey | 330229 | change | 1A | SCI

☒ Walk-in ☐ Appointment ☐ Non-contact note

## PATIENT REPORT

upset about brother's SOT problem. asked about getting visiting.

MSE  
Suicidal ☐ Yes ☒ No (Thought ☐ Plan ☐ Intent ☐ ) Notes

Homicidal ☐ Yes ☒ No

## TREATMENT PLAN

☐ Symptom Monitoring ☐ Crisis Management ☐ Psycho Educational  
☐ Referral to ☐ Intervention

## CONTINUED TREATMENT / RESULTS

☐ Decrease Symptoms  
☐ Improve Functions  
☐ Improved ☐ No Change ☐ Worse

PRINT or TYPE STAFF NAME

N. Kaeppler

STAFF SIGNATURE

N. Kaeppler

DATE SIGNED

08/13/15

☒ Walk-in ☐ Appointment ☐ Non-contact note

## PATIENT REPORT

Question about staff ethics & professionalism

MSE  
Suicidal ☐ Yes ☒ No (Thought ☐ Plan ☐ Intent ☐ ) Notes:

Homicidal ☐ Yes ☒ No

## TREATMENT PLAN

☐ Symptom Monitoring ☐ Crisis Management ☐ Psycho Educational  
☒ Referral to ☐ Intervention

## CONTINUED TREATMENT / RESULTS

☐ Decrease Symptoms  
☐ Improve Functions  
☐ Improved ☐ No Change ☐ Worse

PRINT or TYPE STAFF NAME

N. Kaeppler

STAFF SIGNATURE

N. Kaeppler

DATE SIGNED

08/27/15

☒ Walk-in ☐ Appointment ☐ Non-contact note

## PATIENT REPORT

Discussed his PRC discrepancies - talk over going to B wing

MSE  
Suicidal ☐ Yes ☒ No (Thought ☐ Plan ☐ Intent ☐ ) Notes.

Homicidal ☐ Yes ☒ No

## TREATMENT PLAN

☐ Symptom Monitoring ☐ Crisis Management ☐ Psycho Educational  
☐ Referral to ☐ Intervention

## CONTINUED TREATMENT / RESULTS

☐ Decrease Symptoms  
☐ Improve Functions  
☐ Improved ☐ No Change ☐ Worse

PRINT or TYPE STAFF NAME

N. Kaeppler

STAFF SIGNATURE

N. Kaeppler

DATE SIGNED

09/17/15

☒ Walk-in ☐ Appointment ☐ Non-contact note

## PATIENT REPORT

Happy about recent family visit. Feeling more upset

MSE  
Suicidal ☐ Yes ☒ No (Thought ☐ Plan ☐ Intent ☐ ) Notes

Homicidal ☐ Yes ☒ No

## TREATMENT PLAN

☐ Symptom Monitoring ☐ Crisis Management ☐ Psycho Educational  
☐ Referral to ☐ Intervention

## CONTINUED TREATMENT / RESULTS

☐ Decrease Symptoms  
☐ Improve Functions  
☐ Improved ☐ No Change ☐ Worse

PRINT or TYPE STAFF NAME

N. Kaeppler

STAFF SIGNATURE

N. Kaeppler

DATE SIGNED

10/15/15

PRINT or TYPE SUPERVISOR NAME (if necessary)

SUPERVISOR SIGNATURE (if necessary)

DATE SIGNED

11-23-15

DISTRIBUTION: Original - PSU Record, Referrals/Screening/Contact Section

Exhibit

7

Resp. App. C002

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN

Jeffrey D. Leiser,

PLAINTIFF,

vs

Karen Kloth, (Correctional Sergeant)  
Paula Stoudt, (Unit Manager)  
Reed Richardson, (Warden)

DEFENDANTS,

DEMAND FOR JURY TRIAL

CASE No.

15 C 768-um

DOC NO  
REC'D/FILED  
2015 NOV 30 AM 11:08  
PETER OPPENEER  
CLERK US DIST COURT  
WD OF WI

PLAINTIFF'S CIVIL SUIT  
PURSUANT TO 42 U.S.C. § 1983.

I. Introduction

1) Now comes Plaintiff Leiser, proceeding pro se hereby moves this court to grant this suit and proceed to trial due to defendant's violation of his constitutional right under the 14th amendment and due process of law. Writing a false conduct report, falsifying legal documents, false charges, Equal Protection, Harassment cruel and unusual punishment under the 8th Amendment.

II. Jurisdiction and venue.

2) This court is the appropriate venue under 28 U.S.C. §1391(b)(2), the events giving rise to the claims herein seek damages to be asked for in the complaint, as individual defendant's culpability is determined, and degree of constitutional violation are determined by a jury.

3) This Court has subject matter jurisdiction over Leiser's Federal Law Claims under 28 U.S.C. 1331 and 1334(A)(3). This court has supplemental jurisdiction over Leiser's State Law Claims pursuant to 28 U.S.C. § 1367. This action seeks redress and damages for violations of 42 U.S.C. 1983 and 42 U.S.C. § 1985.

4) At all times relevant to the events described herein, all defendant's acted under color of State Law. In their individual

capacities as DOC Employee/Correctional Staff/Managers/Warden from Stanley Correctional Institution, 100 Corrections Drive, Stanley, WI 54768.

### III. Parties Involved

5) Plaintiff Jeffrey D. Leiser, is a prisoner at Stanley Correctional Institution located at 100 Corrections Drive, Stanley, WI 54768. HEREINAFTER as "SCI"

6) Karen Kloth is a correctional Sergeant for the Department of Corrections and staffed at Stanley Correctional Institution 100 Corrections Drive, Stanley, WI 54768 and is named in her individual capacities as a Sergeant and is responsible for the Inmates that she supervises.

7) Paula Stoudt is the Unit Manager of Unit 1, and is employed by the Department of Corrections and is staffed at Stanley Correctional Institution, 100 Corrections Drive, Stanley, WI 54768, and is named in her individual capacity, and the Unit Manager is responsible for hearing Conduct reports written by Staff.

8) Reed Richardson is the warden of Stanley Correctional Institution and is employed by the Department of Corrections. Richardson is Staffed at Stanley Correctional Institution 100 Corrections drive, Stanley, WI 54768. He is named in his individual capacity as Warden. He is responsible for the actions of his Staff.

### IV. Exhaustion of Administrative Remedies.

9) Leiser hereby states that all exhaustion requirements have been completed that available to him, and according to the Prison Litigation Reform Act 1997(e).

### V. Facts and Summary of Case.

10) On 6/1/15 Defendant Kloth wrote Leiser a ticket #2638089 (See Ex 100) according to Kloth Leiser violated 303.28(3) & 303.53 and states the following:

" I was working a yard post on 5/26/15. I observed inmate (Leiser, Jeffrey 330229 exit housing unit 1 off to the track and then walk over to the court yard fence. Inmate Leiser hugged inmate Wilson, Lord # 538574. I gave direct orders to get off the fence. Stop hugging and to walk on the other side of the yellow line. Inmate Leiser chose to disobey my direct order to walk on the other side of the yellow line and proceeded to walk on the counter side track. I observed Inmate Leiser coming back from B-Building and walk thru the courtyard. I gave "direct order" out of the court yard, on the track only!!" Inmate Leiser gave me the "thousand yard stare" intensely and again blatantly ignoring my direct order again!!

Inmate Leiser was warned about wearing sunglasses inside the building. Inmate Leiser chose to disobey direct orders to remove sunglasses from this staff member. Per page 17 of SCI Handbook aa "No sunglasses or tinted lens's are to be worn inside any buildings." Page 23 b "inmates should never stand along side fence.." page 37 K "No loitering in front of units or center fence." walking/running on track is permitted within yellow line on recreation side.

(See Ex 100)

11) According to DOC 303.28 (3) states: Any inmate who violates any administrative rule or department policy is guilty of disobeying orders. According to 303.53 "Being in an unassigned area" Any inmate who, without an employee's permission, enters or remains in a room or area either inside or outside the institution other than the one to which the inmate is assigned is guilty of being in an unassigned area. Nowhere in these policies stated by Kloth mentions sunglass's, or hugging another inmate due to him leaving the institution and going home.

12) Leiser was given an inmate's Statement for contested minors DOC form 9B 2014. Leiser made the following statement to Sgt Krug:

On 5/26/15, I was not on the fence as Kloth states nor did any one intrude the fence to state unassigned area. You must be in that area. We are allowed to say goodbye to your friend. Kloth never told me to walk on the other side of the yellow line period. They were running a saw and I didn't hear her say a word. Further you Ms. Stoudt walked right past me and did not say a word to me. How can I be disobeying orders if you didn't hear them, also you never said anything to me . On this same day at 12:50p.m.



100 inmates were walking to school on the same side I was, Kloth was standing in front of B-Bldg and never said a word to anyone. Kloth's statement is harassment towards Leiser. As to Kloth stating I blatantly ignoring her direct orders not to walk through the court yard, inmate HOLZEMER# 160550 was in front of me I did not see or hear Kloth say anything to me. Kloth was from what I understand, was standing by the life guard chair. Kloth never told me anything to my face or otherwise. Inmate Holzemer #160550 also stated Kloth did not say anything to either of us! Kloth did not walk into unit 1A with me or Holzemer to say I had my sunglasses on in the unit. This is harassment by Kloth. In order to loitering you must stand in front of one spot longer than 10 seconds. Kloth's actions violate my rights to be free from harassment by staff, Staff misconduct Rule 43. Staff Lying, Mr. Holzemer will state Kloth did not say anything to me or him, she also just wrote me up not Holzemer on 5/26/15.

(See Ex's 101 and 102 'Holzemer's Statement')

13) Leiser states that Kloth is a liar. She never told me or Holzemer not to walk through the court yard. Kloth lied when she said she warned Leiser to take off his glasses on 5/26/15. She lied when she stated that she came into unit one after Leiser & Holzemer.

14) On 5/28/15 Kloth gave Leiser a warning for giving inmate Lord a man hug before he left the institution. Under DOC policy a staff cannot give an inmate a warning and a ticket for the same offense. It triggers Double Jeopardy Clause of the Fourteenth Amendment. This is staff misconduct. It also violates Wis.Stat. §946.12 Misconduct in public office Sub (4) In the officer's or employee's capacity as such officer or employee, makes an entry in an account or record book or return, certificate, report, or statement which in a material respect the officer or employee intentionally falsifies.

15) Staff cannot write a warning for an alleged rule violation and then turn around and write the inmate a ticket for the same offense. That is exactly what Kloth did. (See Ex 103 Leiser's Warning Card) As can be seen, the warning was for giving inmate Lord a hug goodbye.

On 11/17/15 Stoudt denied Leiser a copy of the Warning Card, (See Ex 103 Denial)

16) The ticket clearly states "disobeying direct orders" Kloth wrote Leiser was given a "direct order" to stop hugging, get off the fence, these two direct order's were written wording. This violates Leiser due process right and double jeopardy.

17) According to Kloth's ticket she came into unit one with Leiser, and told him to take off his sunglasses. Leiser presents Mr. Holzemer's written statement/Affidavit that Kloth never told either of us to take off our sunglasses, because she never came inside with us. Furthermore, Holzemer wears prescription glasses, they are not sunglasses. (See Ex 102)

18) Leiser proved that Kloth's conduct report was false, by inmate Holzemer's affidavit. Leiser also asked officer Adrian our first shift officer if Kloth came into the unit with us. He stated "NO" I asked him to please inform the Unit Manager (Stoudt) that Kloth did not walk in the unit with myself and Holzemer, which he did.

19) Leiser claims that Kloths conduct not only violates the 14th amendment, it violates equal protections. Kloth states that she told Leiser "I gave "direct orders" out of the Court yard, on the track only!!" (See Ex 100) Kloth only wrote Leiser up for this allegedly being in an unassigned area. Kloth did not write Holzemer a conduct report/ticket only Leiser.

20) Kloth writes Leiser was in an unassigned area "the Court Yard" while I was coming back from B-Building. However, there is no Department of Corrections or Stanley Correctional rule that states inmates cannot walk through the court yard. This makes the ticket based on false rule violations, for a rule that does not exist. Kloth lied on the conduct report which was proven false. Kloth has been harrasing Leiser every chance she gets. Picking Leiser out of a 100 inmates

that was walking on the opposite side of the yellow line, and yells at him to walk on the other side of the yellow line when Leiser walked past Kloth by B-Building. Kloth does not say a word to anyone else but Leiser.

21) Leiser suffers severe PTSD and has requested from Psychic Services to please inform staff not to stand directly behind me. Kloth was told not to stand directly behind me by staff. Kloth knows this is a serious issue for Leiser and yet, she will walk behind Leiser while he is eating and stand there. Leiser has told her several times not to stand directly behind me because of my PTSD. Kloth states I can stand where ever I want. This is harassment. I have told my Psychic that Kloth continues to do this at times.

22) Under the 8th amendment this constitutes "cruel and unusual punishment!" This inflicts mental emotional stress on Leiser, to the point that Leiser "MUST" get up and dump his tray before he loses it! There is "NO" legitimate penological purpose for Kloth to stand behind Leiser during meals or while Leiser is in the day room. Kloth's conduct constitutes cruel and unusual punishment for the sole purpose of harassment.

#### DEFENDANT STOUTT

23) Stoutt is the unit manager for unit 1, part of her job duties are to hear and determine conduct reports. Interview witnesses etc. On 5/28/15 Leiser spoke with Stoutt about the conduct report written by Kloth. Leiser informed Stoutt that the ticket is "bogus" that Kloth never told me to take off my sunglasses, or gave me a direct order to get off the fence, or walk on the other side of the yellow line.

24) Leiser also told her that Kloth was lying, and that inmate Holzemer was with Leiser (in front of Leiser) while walking through the court yard. (See Holzemer's Affidavit **Ex 102**) Leiser also told Stoutt that Holzemer did not receive a ticket only Leiser. That this is harassment by Kloth.

25) Officer Adrian told Stoudt that Kloth did not walk in with me and Holzemer as she claimed in the conduct report. Leiser pointed out to Stoudt that Kloth singled Leiser out of a 100 inmates. Leiser has informed Stoudt that Kloth is harassing Leiser and that it needs to stop. That everything in that conduct report is false.

26) Stoudt as the unit manager has authority over staff. It is her job to make sure that if staff is falsifying conduct reports she is to write that staff up for violation DOC and SCI employee's rules. Stoudt is also to report such conduct to the Warden by writing and incident report of misconduct. However, Stoudt refused to follow proper procedures so that Kloth could have been disciplined for her criminal conduct.

27) Wisconsin has a statute called Misconduct in Public Office §946.12 (4) DOC employee's are bound to follow all Laws of the State, they are Public officer's that work for the State of Wisconsin. Sub (4) states: In the officer's or employee's capacity as such officer or employee, makes an entry in an account of record book or return, certificate, report or statement which in a material respect the officer or employee intentionally falsifies. Is guilty of a class I felony.

28) Leiser's point is that Kloth made a report, statement that she knew to be false and Stoudt disregarded that information and still found Leiser guilty of Disobeying Orders 303.28, and dismissed the Unassigned area. Because there is no rule stating that walking through the court yard violates unassigned area.

29) Stoudt's deliberate and willful disregard for policy and procedures as clearly seen by the fact that she found Leiser guilty of the conduct report. That she failed to write Kloth up for her misconduct, for her falsifying legal documents. For her singling Leiser out for the sole purpose of harassing Leiser. Stoudt disregarded her Job duties. Stoudt made a deliberate choice to disregard DOC and SCI policies.

30) Leiser argues that Stoudt's refusal to dismiss the conduct report and not write Kloth up shows she approves of the illegal tactics by Kloth.

31) Stoudt's approval of Kloth's misconduct and harassment by Kloth is cruel and unusual punishment. Stoudt knows that Kloth is a danger to inmates and staff. Yet does nothing to protect or stop this illegal conduct by Kloth. Stoudt knows that the minute Kloth steps into a unit tension increases 10 fold. Stoudt believes her staff before any inmate no matter how many complaints are filed or how many inmates witnessed the misconduct by Kloth, Stoudt sides with Kloth every time.

DEFENDANT RICHARDSON

32) Warden Richardson is the overseer of SCI. He is responsible for all inmates safety. He is also responsible for his staff's conduct. Richardson also reviews all ICE's and reviewed the ICE Leiser filed against Kloth ICE # SCI-2015-10912 on 7/3/15 Warden Richardson rejected Leiser's ICE in accordance with DOC 310.11(5). (See Ex 105)

33) According to Richardson and the ICE Graber, Leiser did not appeal the conduct report. Leiser was unable to appeal anything because Stoudt dictated to the Unit Clerk that all appeal forms are to be pulled from the holder and kept behind the desk.

34) No one was notified of this change, nor did any of the Officers know where they were. When Leiser brought this to Sgt Krug's attention after the ICE was dismissed/rejected. Denied Leiser his right to appeal the conduct report.

35) It should be noted that the ICE excepted the ICE as fully exhausted of the chain of command. (See Ex 104) Leiser was denied his right to appeal the ticket because of staff's actions of hiding the appeal forms.

36) Regardless, Richardson was informed of Kloths misconduct when he reviewed Leiser's ICE. Richardson had the opportunity to correct this misconduct by Kloth, yet failed to do anything. (See Ex 105)

37) Richardson is well aware of Kloth constant harassment of Leiser, and her constant lying on conduct reports, falsifying records, making false statements, and knows Kloth is a danger to inmates and staff. Yet he turns a blind eye on it all.

38) Richardson is liable for his staff's actions. His deliberate acceptance of Kloth's misconduct is crue and unusual punishment to Leiser's mental health. Richardson has no immunity when he knows first hand that Kloth files false conduct reports and harasses inmates. The blind eye trick doesn't work.

### CONCLUSION

All three defendant are liable for there illegal actions/misconduct in public office. Kloth deliberately wrote a false conduct report because she knew she could without punishment. Stoudt allowed her to keep up her misconduct by failing to write Kloth up for it once Leiser proved it was a false conduct report.

Richardson turns a blind eye everytime an inmate complains about Kloth, and her misconduct. Richardson was made aware by Leiser's ICE that Kloth falsified a conduct report and that Kloth is harassing Leiser. Richardson turns a blind eye to all his staff's misconduct. It is clear that Stoudt approves of this misconduct by Kloth. Stoudt failed to report it to the proper authorities. Richardson or DOC Head Quarters. Staff has a constitutional duty to protect inmates from abuse by staff. Here at Stanley, the constitution does not apply, inmates have no rights to be free from cruel and unusual punishment.

Leiser respectfully prays this court will grant him to proceed to trial and to hold the defendants accountable for their constant illegal/misconduct.

### Damages Requested,

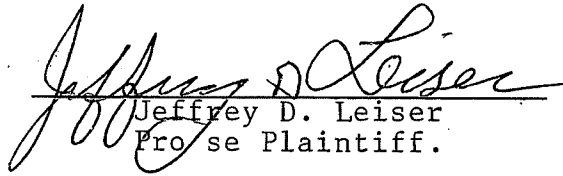
Leiser, request that Defendant Stoudt and Richardson be liable to Leiser in the amount of \$10,000 dollars each.

Leiser, request that Kloth be liable to him for the amount of \$100,000.00 dollars for her willful infliction of Mental and Emotional abuse/ Stress, for her willful disregard of DOC and SCI employee's policys.

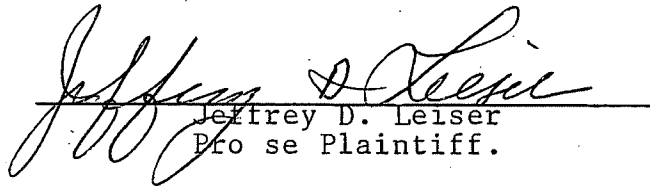
For the mental anguish. For her willful disregard of Leiser's mental illness. (PTSD)

Dated this 19 day of November 2015.

Respectfully Submitted,

  
Jeffrey D. Leiser  
Pro se Plaintiff.

Leiser hereby certifies that this document is true and correct to the best of his ability and under the penalty of perjury under 28 U.S.C. § 1746, and 18 U.S.C. §1621.

  
Jeffrey D. Leiser  
Pro se Plaintiff.

C: File  
CC: Home

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

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JEFFREY D. LEISER

Plaintiff,

v.

KAREN KLOTH, et al.,

Defendants.

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OPINION and ORDER

Case No. 15-cv-768-slc

Pro se plaintiff Jeffrey D. Leiser has submitted a proposed civil action pursuant to 42 U.S.C. § 1983, alleging that a conduct report he received violates the Double Jeopardy Clause, his Fourteenth Amendment right to Equal Protection and the Eighth Amendment. He also alleges that manner in which defendants treat him in light of his Post-Traumatic Stress Disorder (“PTSD”) violates the Eighth Amendment. The parties consented to magistrate judge jurisdiction, and on April 27, 2016, this case was reassigned to me. (Dkt. 7.) Having determined that Leiser may proceed under the *in forma pauperis* statute, 28 U.S.C. § 1915, and that he has made his partial payment, the court finds that Leiser’s complaint is ready for screening under 28 U.S.C. § 1915A.

After leniently construing the allegations in Leiser’s complaint, *Haines v. Kerner*, 404 U.S. 519, 521 (1972), I am permitting him to proceed on his Eighth Amendment claim against Defendant Karen Kloth and his related failure to protect claim against defendants Paula Stroudt and Reed Richardson. I am dismissing all of Leiser’s other claims.



### ALLEGATIONS OF FACT<sup>1</sup>

Leiser currently is incarcerated at Stanley Correctional Institution (“SCI”), where the events alleged in his complaint took place. The defendants are SCI employees -- Karen Kloth is a correctional sergeant, Paula Stroudt is a unit manager responsible for handling conduct reports written by SCI staff, and Reed Richardson is the SCI warden.

Leiser’s complaint arises mainly from Conduct Report #2638089, which Sgt. Kloth issued to him on May 28, 2015. (Dkts. 1-2.) In her report, Kloth states that while she was posted in the yard on May 26, 2015, she saw Leiser go to the track, walk to the courtyard fence and hug another inmate. Kloth’s report further states that she ordered Leiser off the fence, to stop hugging, and to walk to the other side of the yellow line in the yard, but that Leiser disobeyed these orders and continued walking on the courtyard side of the track. Kloth also states that she observed Leiser coming back and walking through the courtyard, at which point she ordered him “out” of the courtyard and back onto the track. She states that Leiser responded with a “thousand yard stare” and blatantly ignored her order. Beyond the courtyard incident, Kloth states that although she had warned Leiser not to wear sunglasses inside, Leiser disobeyed that order as well. The conduct report states that Leiser violated DOC 303.28(3), Disobeying Orders, and DOC 303.53, Being in an Unassigned Area.

Leiser claims that Conduct Report #2638089 is false: he claims that Kloth never told him not to walk through the courtyard, nor did she tell him to take off his sunglasses. He submitted the affidavit of another inmate, Jeffrey Holzemer, in support; Holzemer stated that Kloth never came inside with them, so she did not observe them wearing sunglasses inside.

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<sup>1</sup> Solely for purposes of this order, the court assumes the well-pled allegations in Leiser’s complaint to be true.

Leiser also claims Kloth already had issued a formal warning card to Leiser on May 28, 2015 about the same “man hug.” Leiser asserts that inmates cannot receive warnings and conduct reports for the same offense, due to the double jeopardy clause. Finally, Leiser claims that because Holzemer was with him when he walked across the courtyard, the fact that only he received a conduct report violated the Equal Protection Clause of the Fourteenth Amendment.

After the conduct report was issued, Stoudt spoke with Leiser about it. Apparently Leiser told her all the reasons why he felt that Kloth’s allegations were false and that Kloth had been harassing him. Stoudt did not dismiss the conduct report or take disciplinary action against Kloth. Leiser claims that Stoudt’s inaction constitutes cruel and unusual punishment in violation of the Eighth Amendment.

Beyond telling Stoudt that the report was false, Leiser also filed Inmate Complaint #SCI-2015-10912 on July 3, 2015, with Richardson, also complaining about Kloth’s harassment and false conduct report. Richardson rejected Leiser’s complaint; Leiser now claims that Richardson’s failure to act also violated his rights under the Eighth Amendment.

Separate from the conduct report issue, Leiser raises an Eighth Amendment cruel and unusual punishment claim against Kloth, claiming that Kloth intentionally disrespects one of the triggers of his Post Traumatic Stress Disorder. Leiser states that as a result of his PTSD, Leiser has asked psychiatric services to inform SCI staff not to stand directly behind him. Leiser claims that “several time[s]” on unspecified dates, Kloth has ignored this directive by standing directly behind him in the dayroom and during meals, then has disregarded Leiser’s requests that she not stand behind him. Beyond claiming that he suffered emotional distress as a result of Kloth’s behavior, Leiser does not allege any injury.

## OPINION

**I. Double Jeopardy**

Leiser claims that the conduct report violates double jeopardy because both the warning received and the conduct report are based on the same hug. This claim lacks merit. The Double Jeopardy Clause of the Fifth Amendment, applicable to the states through the Fourteenth Amendment, *Benton v. Maryland*, 395 U.S. 784, 794 (1969), provides that no person shall “be subject for the same offense to be twice put in jeopardy of life or limb.” U.S. Const. amend. V. The Supreme Court has recognized that the Fifth Amendment Double Jeopardy Clause protects against successive prosecutions for the same offense after acquittal or conviction and against multiple punishments for the same offense in successive proceedings. *See, e.g., North Carolina v. Pearce*, 395 U.S. 711, 717 (1969). However, “the [Double Jeopardy] Clause protects only against multiple *criminal* punishments for the same offense.” *Hudson v. United States*, 522 U.S. 93, 99 (1997) (emphasis in original) (citations omitted).

Here, the Double Jeopardy Clause is not in play. First, the warning and conduct report are not criminal proceedings, they are part of SCI’s disciplinary system. Second, the warning and conduct report did not involve multiple punishments. Leiser does not allege that he received a punishment when he was warned about the hug. Rather, the conduct report was the only punitive measure taken against Leiser that would involve any sort of punishment akin to a sentence. Accordingly, Leiser has no double jeopardy claim against any of the defendants.

## II. Equal Protection

Leiser's equal protection claim also fails. Generally plaintiffs bringing an equal protection claim must establish that a state actor has treated him differently because of his membership in a particular class and that the state actor did so purposefully. *DeWalt v. Carter*, 224 F.3d 607, 618 (7th Cir. 2000). Here, Leiser alleges that Holzemer did not receive a conduct report for walking across the courtyard even though they were walking across together, but Leiser does not claim that Kloth treated him differently from Holzemer due to Leiser's membership in any particular class.

However, a plaintiff may also assert an equal protection claim on behalf of a "class of one," where the plaintiff pleads "*both* the absence of a rational basis for the defendant's action *and* some improper personal motive . . . for the differential treatment." *Del Marcelle v. Brown Cnty. Corp.*, 680 F.3d 887, 899 (7th Cir. 2012) (Posner, J., lead opinion) (emphasis in original); *see Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). Although Leiser claims that Kloth was harassing him, he does not allege that Kloth had no basis to write him up for walking across the courtyard, and he does not allege that she did so as a result of an improper personal motive. According to Kloth's report, which Leiser quotes in his complaint, she claims that she gave Leiser several different orders and he disobeyed them all. Leiser may dispute Kloth's interpretation of his lack of responsiveness to her orders, but the facts that he alleges do not establish that Kloth wrote up Leiser without any rational basis.

The fact that Kloth wrote up Leiser but no other inmates engaged in similar conduct does not, by itself, establish the animus necessary to state a class-of-one equal protection claim. As the Supreme Court has observed,

[A]llowing an equal protection claim on the ground that a ticket was given to one person and not to others, even if for no discernible or articulable reason, would be incompatible with the discretion inherent in the challenged action. It is no proper challenge to what in its nature is a subjective, individualized decision.

*Engquist v. Oregon Dept. Of Agriculture*, 553 U.S. 591, 604 (2008). Judge Easterbrook in his concurrence in *Del Marcelle* takes this notion one step further: he glosses the block quote above as saying “that issuing particular law-enforcement citations is outside the scope of class-of-one analysis because law enforcement is permissibly discretionary.” *Del Marcelle*, 680 F.3d at 904-05 (Easterbrook, J., concurring). In light of these decisions, this district court has held that “class-of-one claims likely fail in the prison context as well, at least as far as discretionary decisionmaking is concerned.” *Shaw v. Wall*, No. 12-cv-497-wmc, 2014 WL 7215764, at \*2 (W.D. Wis. Dec. 17, 2014); *see also Taliaferro v. Hepp*, No. 12-cv-921-bbc, 2013 WL 936609, at \*6 (W.D. Wis. Mar. 11, 2013) (“class-of-one claims are likely never cognizable in the prison disciplinary context”); *Jackson v. Flieger*, No. 12-cv-220-bbc, 2012 WL 5247275, at \*4 (W.D. Wis. Oct. 23, 2012) (“Because plaintiff is challenging decisions that by their nature involve discretionary decision-making based on a vast array of subjective, individualized assessments ... this suggests strongly that plaintiff could not prevail on his equal protection claim even if he could show that there was no rational basis for the differential treatment.”). While Leiser does allege that Kloth has harassed him in another context, by triggering his PTSD, these allegations are not sufficient for the court to construe the conduct report as anything other than a discretionary disciplinary action. Accordingly, because the conduct report was not arbitrary--in fact, was the product of Kloth’s discretionary powers as an SCI correctional sergeant--Leiser’s

class-of-one claim is foreclosed. In short, Leiser does not state a claim under the Equal Protection Clause.

### III. Eighth Amendment

While Leiser's harassment allegations do not support an equal protection claim, they do create an inference sufficient to state an Eighth Amendment claim against Kloth, Stoudt and Richardson. As to Kloth, Leiser claims that when she stands behind him despite his requests that she stand elsewhere due to his PTSD, this constitutes cruel and unusual punishment in violation of the Eighth Amendment. As the Seventh Circuit recently stated, "most verbal harassment by jail or prison guards does not rise to the level of cruel and unusual punishment." *Beal v. Foster*, 803 F.3d 356, 358 (7th Cir. 2015) (citing *DeWalt v. Carter*, 224 F.3d, 607, 612 (7th Cir. 2002)). Yet in *Beal* the court also recognized that some types of harassment can rise to the level of cruel and unusual punishment, and thus has cautioned against dismissing complaints alleging harassment at the screening stage. *Id.*

Here, while Kloth's behavior seems innocuous—she was simply standing behind Leiser—it allows the inference urged by Leiser that she may have been deliberately attempting to trigger his PTSD. Leiser alleges not only that psychiatric services informed Kloth not to stand behind him because it may trigger his PTSD, but also that Leiser himself told her several times not to stand directly behind him. Thus, Kloth allegedly knew, not just from plaintiff but more importantly, from the SCI psychological services unit as well, that she should not stand behind him. Leiser claims that Kloth repeatedly and intentionally refused to follow this directive, which caused Leiser emotional distress. At the pleading stage, this allows an inference that Kloth had

been deliberately attempting to cause Leiser to suffer psychological harm in violation of the Eighth Amendment. *See Beal*, at 357-58 (“[T]he alleged pain sufficient to constitute cruel punishment may be physical *or psychological*.”) (citation omitted). Accordingly, I will permit Leiser to proceed on this claim against Kloth.

As to Stoudt and Richardson, plaintiff claims that Stoudt’s inaction after he told him that Kloth’s conduct report was false, and Richardson’s inaction after he filed an inmate complaint about Kloth, both constitute cruel and unusual punishment. As these claims focus on the failure to act, it is better to characterize them as claims that the defendants failed to protect him from harassment. *See Farmer v. Brennan*, 511 U.S. 825, 837 (1994). To state an Eighth Amendment failure to protect claim, a prisoner must allege that (1) he faced a “substantial risk of serious harm” and (2) the prison officials identified acted with “deliberate indifference” to that risk. *Id.* at 834. Deliberate indifference has two components: (1) a defendant must have actually known that the inmate was at risk; and (2) the defendant must have disregarded that risk by failing to take reasonable measures in response. *Brown v. Budz*, 398 F.3d 904, 909 (7th Cir. 2005).

Here, Leiser alleges that Stoudt and Richardson failed to punish Kloth for her ongoing harassment campaign against him. These facts suggest that they knew about Kloth’s past treatment of Leiser and that they knew that Kloth’s harassment was ongoing, particularly her alleged attempts to trigger Leiser’s PTSD. Accordingly, their alleged decisions not to attempt to curb this specific type of behavior by Kloth allow the inference at the pleading stage that they disregarded the risk that Leiser would be harmed as a result of her PTSD-related harassment.

I will therefore permit plaintiff to proceed on an Eighth Amendment failure to protect claim against Stroudt and Richardson limited to the PTSD issue.

ORDER

IT IS ORDERED that:

- (1) Plaintiff Jeffrey Leiser is GRANTED leave to proceed on his Eighth Amendment harassment claim against defendant Karen Kloth, as well as his Eighth Amendment failure to protect claim against defendants Paula Stroudt and Reed Richardson, limited to plaintiff's claim of harassment related to his PTSD.
- (2) Plaintiff is DENIED leave to proceed on his double jeopardy and Equal Protection claims.
- (3) For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to the defendants' attorney.
- (4) Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.
- (5) Pursuant to an informal agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on defendant. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for the defendant.



- (6) If plaintiff is transferred or released while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendants or the court are unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 9<sup>th</sup> day of May, 2016

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge

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

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JEFFREY D. LEISER,

Plaintiff,

v.

Case No. 15-cv-768-slc

KAREN KLOTH, et al.,

Defendants.

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**DEFENDANTS' BRIEF IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT**

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The Court allowed Plaintiff Jeffrey Leiser to proceed on an Eighth Amendment claim against Defendant Karen Kloth for standing behind Leiser in a purportedly deliberate attempt to trigger his post-traumatic stress disorder (PTSD).<sup>1</sup> The Court also allowed Leiser to proceed on claims against Paula Stoudt and Reed Richardson for failing to intervene to stop Kloth's purported harassment in violation of the Eighth Amendment.<sup>2</sup> But Leiser's complaint fails to state how he was actually harmed here, psychologically or otherwise. Leiser never told Kloth or the other Defendants that he suffered from PTSD, or that people standing behind him triggered his PTSD. Leiser

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<sup>1</sup> Dkt. 8:7-8.

<sup>2</sup> Dkt. 8:8.

never complained about this issue to any staff other than his psychological services clinician. Psychological services staff never issued a directive or told Kloth that staff could not stand behind Leiser because of his PTSD. Indeed, non-defendant psychologist Dr. Jesse Frey opines that it would be counterproductive for Leiser if psychological services were to issue such a directive to staff. Now before the Court is the Defendants' motion for summary judgment.

### **STATEMENT OF FACTS**

At all times relevant, Jeffrey Leiser was an inmate housed at Stanley Correctional Institution.<sup>3</sup> The Defendants were Department of Corrections' employees at Stanley: Kloth was a sergeant, Stoudt was a unit manager, and Richardson was the warden.<sup>4</sup>

On March 30, 2015, Leiser was diagnosed with post-traumatic stress disorder (PTSD).<sup>5</sup> Leiser told his psychological services clinician that he believes his childhood trauma is related to his fear of having people standing behind him.<sup>6</sup>

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<sup>3</sup> Defendants' Proposed Findings of Fact (DPFOF) ¶ 1.

<sup>4</sup> DPFOF ¶¶ 2-4.

<sup>5</sup> DPFOF ¶ 12.

<sup>6</sup> DPFOF ¶ 13.

Unit security staff are generally not informed of an inmate's clinical diagnosis.<sup>7</sup> If a special accommodation is needed for that inmate, a treatment plan will be implemented and psychological services staff will inform unit security staff of symptoms, behavioral or emotional responses of that inmate and of any special accommodations needed to address the inmate's issues.<sup>8</sup>

Psychological services staff did not put a treatment plan in place regarding an accommodation for Leiser's PTSD, particularly an accommodation forbidding staff from standing behind him.<sup>9</sup> Psychological services staff also did not inform unit security staff of Leiser's PTSD diagnosis or his fear of people standing behind him.<sup>10</sup>

Psychologist Supervisor, Dr. Jesse Frey's professional opinion is that it would be problematic to include a directive that people cannot stand behind Leiser in a treatment plan.<sup>11</sup> Psychologists focus on internal change, not external change.<sup>12</sup> This is because people cannot change how others act or behave; a person can only change how he or she behaves.<sup>13</sup> Forbidding people from standing behind Leiser would not be addressing the mental health issue and would be setting him up for failure, since Stanley is a

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<sup>7</sup> DPFOF ¶ 7.

<sup>8</sup> DPFOF ¶ 8.

<sup>9</sup> DPFOF ¶ 15.

<sup>10</sup> DPFOF ¶ 16.

<sup>11</sup> DPFOF ¶ 17.

<sup>12</sup> DPFOF ¶ 18.

densely populated correctional facility.<sup>14</sup> A populated environment such as Stanley would make it very difficult, if not impossible, to avoid someone standing behind Leiser.<sup>15</sup> Dr. Frey's opinion, to a reasonable degree of professional clinical certainty, is that Leiser did not need an accommodation directive precluding Stanley security staff from standing or moving behind him.<sup>16</sup>

### STANDARD OF REVIEW

Under Fed. R. Civ. P. 56(c), summary judgment is appropriate when there is no genuine issue as to any material fact and when the moving party is entitled to a judgment as a matter of law. The moving party seeking summary judgment "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "An adverse party may not rest upon the mere allegations or denials of his pleadings, but his response . . . must set forth specific facts showing that there is a genuine issue for trial." *Id.* at 322, n.3.

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<sup>13</sup> DPFOF ¶ 18.

<sup>14</sup> DPFOF ¶ 19.

<sup>15</sup> DPFOF ¶ 20.

<sup>16</sup> DPFOF ¶ 21.

A dispute concerning facts that are not material to a determinative issue does not preclude summary judgment. *Donald v. Polk Cty.*, 836 F.2d 376, 379 (7th Cir. 1988). “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

The moving party is “entitled to a judgment as a matter of law” when the nonmoving party has failed to make a sufficient showing on an essential element of his case with respect to which he has the burden of proof. *Celotex Corp.*, 477 U.S. at 323. If the nonmoving party “cannot muster sufficient evidence to make out its claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law.” *Anderson*, 477 U.S. at 249.

**I. Leiser’s Eighth Amendment harassment claim does not rise to the level of cruel and unusual punishment.**

“The test for what constitutes ‘cruel and unusual punishment’ is an objective one. It is not the actual fear of the victim, but what a ‘reasonable’ victim would fear.” *Dobbey v. Illinois Dep’t of Corr.*, 574 F.3d 443, 445 (7th Cir. 2009). The Seventh Circuit has held that “[t]hreats of grave violence can constitute cruel and unusual punishment under the Eighth Amendment.”

*Hughes v. Farris*, 809 F.3d 330, 334 (7th Cir. 2015) (citing *Dobbey v. Ill. Dep't of Corr.*, 574 F.3d 443, 445 (7th Cir. 2009)). Here, Leiser's claim does not rise to the level of cruel and unusual punishment.

In *Dobbey*, the Seventh Circuit found that a threat "can rise to level of cruel and unusual punishment." 574 F.3d at 445. The court concluded, however, that a prison guard's alleged act of getting up in the middle of a card game to hang a noose in the sight of black prisoners, while other guards calmly continued the card game, could not reasonably be taken seriously as a threat (rather than as racial harassment), and did not rise to the level of cruel and unusual punishment, as required to support prisoner's section 1983 claim against the prison officials:

The line between "mere" harassment and "cruel and unusual punishment" is fuzzy, but we think the incident with the noose and the "evil eyes" falls on the harassment side of the line because it was not a credible threat to kill, or to inflict any other physical injury. The case falls well short of *Burton v. Livingston*, 791 F.2d 97, 100-01 (8th Cir.1986), where a prisoner alleged that a guard pointed a gun at him, cocked it, called him "nigger," and repeatedly threatened to shoot him, or *Irving v. Dormire, supra*, 519 F.3d at 449-50, where a prisoner alleged that a guard had threatened to kill him, repeatedly offered a bounty to any prisoner who would assault him, and gave a prisoner a razor blade with which to assault him. See also *Northington v. Jackson, supra*, 973 F.2d at 1524.

*Id.* at 446. The court affirmed the dismissal of the plaintiff's Eighth Amendment claim at screening. *Id.* at 447.

Recently, in *Beal* and *Hughes*, the Seventh Circuit has allowed the plaintiffs to proceed on verbal harassment claims under the Fourteenth Amendment. *Beal v. Foster*, 803 F.3d 356, 358 (7th Cir. 2015). These cases involved nearly identical allegations that guards verbally abused inmates by using anti-gay slurs. *Hughes*, 809 F.3d at 334. In *Beal*, guards called “an inmate ‘derisive terms’ like ‘punk, fag, sissy, and queer,’ thereby ‘increasing the likelihood of sexual assaults on him.’” *Hughes*, 809 F.3d at 334 (quoting *Beal*, 803 F.3d at 358). The *Hughes* court found that this kind of abuse constituted claims for violation of the plaintiff’s due process claim under the Fourteenth Amendment – the plaintiff was a pre-trial detainee, so the Fourteenth Amendment, rather than the Eighth Amendment applied. *Id.*

In the current case, Leiser’s allegations do not come close to the kind of harassment described in *Hughes* and *Beal*—not even close to the harassment described in *Dobbey*. Leiser does not allege that Kloth threatened him with grave violence. He does not allege that she used racial slurs, or abusive language related to his gender or sexual orientation. Rather, he asserts that Kloth sometimes stood behind him at meals, which caused him to get up and dump his tray before he “lost it!”<sup>17</sup>

Indeed, Leiser suffered no actionable harm, physical or psychological, related to his claim that Kloth would stand or walk behind him during meals.



His psychological services records have no indication that Leiser experienced severe emotional distress during meals because of Kloth. Leiser did tell his clinician that he was upset over the new medication distribution policy, which required him to wait in line for his medications in the health services unit.<sup>18</sup> If Leiser reported other incidents that triggered his PTSD, it is reasonable to infer that he would have reported to his clinician that Kloth was intentionally triggering his PTSD during meals. But he didn't.

Leiser's Eighth Amendment claim against Kloth for standing behind him during meals should be dismissed because it doesn't rise to the level of cruel and unusual punishment and because he suffered no actionable harm.

**II. Kloth was not aware of Leiser's PTSD diagnosis, nor was she aware that standing or moving behind him triggered his PTSD.**

Leiser alleges that psychological services staff issued a directive precluding staff from standing behind Leiser because it triggered his PTSD.<sup>19</sup> This is untrue.<sup>20</sup> Leiser also alleges that he told Kloth not to stand behind him because it would trigger his PTSD.<sup>21</sup> This is also untrue.<sup>22</sup> Leiser never told Kloth that he had PTSD and that standing behind him triggered his

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<sup>17</sup> Plaintiff's Complaint, ¶ 22, dkt. 1:6.

<sup>18</sup> DPFOF ¶ 13.

<sup>19</sup> Plaintiff's Complaint, ¶ 21, dkt. 1:6.

<sup>20</sup> DPFOF ¶¶ 15-16.

<sup>21</sup> Plaintiff's Complaint, ¶ 21, dkt. 1:6.

PTSD.<sup>23</sup> Kloth first became aware of Leiser's allegations after he filed this lawsuit.<sup>24</sup>

The Defendants anticipate that Leiser will attempt to create a disputed fact about whether he told Kloth about his PTSD. But Leiser will not be able to dispute that psychological services staff never issued a treatment plan or directive instructing staff not to stand or move behind him because of his PTSD. So even if Leiser told Kloth not to stand behind him, Leiser doesn't get to set rules for the way Kloth supervises inmates during mealtimes. At times, during Kloth's regular rounds in the day room or the cafeteria, Kloth would need to move behind or stand behind inmates, including Leiser, in order to monitor the activities of the inmates on the unit.<sup>25</sup> If Leiser had a problem with it, he could have filed a complaint with the inmate complaint review system. Or he could have complained to his psychological services clinician, like he did when the medication distribution policy changed. But he didn't.<sup>26</sup>

Kloth did not deliberately attempt to trigger Leiser's PTSD. Supervising the inmates during lunchtime required her to move about the dining area, including behind the inmates.<sup>27</sup> As Dr. Frey opined, a directive

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<sup>22</sup> DPFOF ¶¶ 22-23.

<sup>23</sup> DPFOF ¶¶ 22-23.

<sup>24</sup> DPFOF ¶ 36.

<sup>25</sup> DPFOF ¶¶ 25.

<sup>26</sup> DPFOF ¶ 34.

<sup>27</sup> DPFOF ¶¶ 25, 27.

forbidding staff from standing or moving behind Leiser would be counterproductive to his mental health treatment because Leiser cannot change how other people act, he can only change how he acts.<sup>28</sup> A populated environment such as Stanley would make it very difficult, if not impossible, to avoid someone standing behind Leiser.<sup>29</sup> Kloth was just doing her job when she stood or moved behind Leiser, she did not do it to cause him harm or emotional distress.<sup>30</sup> Leiser's claim against her should be dismissed.

**III. Leiser's failure to intervene claims against Stoudt and Richardson fail because he was not subjected to cruel and unusual punishment and these Defendants were unaware of Leiser's PTSD diagnosis and triggers.**

Stoudt and Richardson cannot be held liable for failing to intervene if the underlying conduct states no claim. *Fillmore v. Page*, 358 F.3d 496, 505–06 (7th Cir. 2004). And even if it did, neither Stoudt, nor Richardson, had knowledge of Leiser's PTSD diagnosis or his allegations that Kloth was deliberately attempting to trigger his PTSD by standing behind him.<sup>31</sup>

“An officer who is present and fails to intervene to prevent other law enforcement officers from infringing the constitutional rights of citizens is liable under § 1983 if that officer had reason to know ... that any constitutional violation has been committed by a law enforcement official;

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<sup>28</sup> DPFOF ¶¶ 17-19

<sup>29</sup> DPFOF ¶ 20.

<sup>30</sup> DPFOF ¶¶ 26-27.

and the officer had a realistic opportunity to intervene to prevent the harm from occurring.” *Yang v. Hardin*, 37 F.3d 282, 285 (7th Cir. 1994). This language merely reiterates the long-established rule that “[a]n official satisfies the personal responsibility requirement of § 1983 if she acts or *fails* to act with a deliberate or reckless disregard of the plaintiff’s constitutional rights.” *Fillmore v. Page*, 358 F.3d 496, 505–06, 2004 WL 302393 (7th Cir. 2004).

Here, Stoudt and Richardson were unaware of Leiser’s PTSD diagnosis.<sup>32</sup> He never complained to them or told them Kloth was allegedly deliberately triggering his PTSD.<sup>33</sup> Without knowledge and a realistic opportunity to intervene, Stoudt and Richardson cannot be liable under the Eighth Amendment. Thus, Leiser’s claims against them must be dismissed.

#### **IV. The defendants are entitled to qualified immunity.**

Qualified immunity attaches when an official’s conduct “does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *White v. Pauly*, 137 S. Ct. 548, 551-52 (2017). While the Supreme Court’s case law “do[es] not require a case directly on point for a right to be clearly established, existing precedent must have placed the statutory or constitutional question beyond debate.” *Id.* (internal

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<sup>31</sup> DPFOF ¶¶ 28-29, 31-35.

<sup>32</sup> *Id.*

quotations omitted). “In other words, immunity protects all but the plainly incompetent or those who knowingly violate the law.” *Id*

Recently, the Supreme Court reiterated the longstanding principle that “‘clearly established law’ should not be defined ‘at a high level of generality.’” *Id.* The Court explained that the clearly established law must be particularized to the facts of the case. *Id.* Otherwise, “plaintiffs would be able to convert the rule of qualified immunity ... into a rule of virtually unqualified liability simply by alleging violation of extremely abstract rights.” *Id.* (internal quotations omitted).

In *White*, the Court reversed the District Court and Tenth Circuit’s decisions denying<sup>34</sup> summary judgment on qualified immunity grounds for a police officer’s alleged use of excessive force. The Court emphasized that under the clearly established analysis, it is still necessary to identify a case where an officer acting under similar circumstances was held to have violated the Constitutional right. *Id.* at \*5. The Court concluded that the cases the Tenth Circuit relied on were insufficient to clearly establish the right because they laid out “excessive-force principles at only a general level.” *Id.* The Court also noted that when a case presents a unique set of facts and circumstances,

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<sup>33</sup> *Id.*

<sup>34</sup> The Tenth Circuit affirmed the District Court’s denial of summary judgment on qualified immunity grounds.

that alone should be an indication that the conduct did not violate a clearly established right. *Id.*

For the qualified immunity analysis on summary judgment, “the Court considers only the facts that were knowable to the defendant.” *Id.* Thus, the issues for this Court are whether clearly established federal law prohibited Kloth from standing or moving behind Leiser while supervising inmates during mealtimes, despite no directive from psychological services staff or treatment plan forbidding it. The defendants are entitled to qualified immunity and Leiser’s claims against them should be dismissed.

### **CONCLUSION**

The Defendants request the Court to grant their motion for summary judgment and dismiss Leiser’s claims, with prejudice.

Dated this 12<sup>th</sup> day of May, 2017.

Respectfully submitted,

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