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

UNITED STATES OF AMERICA, Plaintiff, v. MERCER COUNTY, NEW JERSEY; BRIAN M. HUGHES, MERCER COUNTY EXECUTIVE; APRIL AARONSON, DIRECTOR OF MERCER COUNTY DEPARTMENT OF HUMAN SERVICES; ROBERT F. ECROYD, ADMINISTRATOR OF THE MERCER COUNTY GERIATRIC CENTER; IN THEIR OFFICIAL CAPACITIES, Defendants.	)	Case No. COMPLAINT

PLAINTIFF, THE UNITED STATES OF AMERICA, by its undersigned attorneys, hereby alleges upon information and belief:

1. The Attorney General files this complaint on behalf of the United States of America pursuant to the Civil Rights of Institutionalized Persons Act, 42 U.S.C. § 1997, to enjoin the named Defendants from depriving residents housed in the Mercer County Geriatric Center (MCGC) of rights, privileges, or immunities secured and protected by the Constitution and laws of the United States.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345.

3. The United States is authorized to initiate this action

pursuant to 42 U.S.C. § 1997a.

4. The Attorney General has certified that all pre-filing requirements specified in 42 U.S.C. § 1997b have been met. The Certificate of the Attorney General is appended to this Complaint and is incorporated herein.

5. Venue in the District of New Jersey is proper pursuant to 28 U.S.C. § 1391.

DEFENDANTS

6. Defendant MERCER COUNTY (County) is a governmental subdivision created under the laws of the State of New Jersey. The DEPARTMENT OF HUMAN SERVICES is a division of the Mercer County government. The County owns and operates the MERCER COUNTY GERIATRIC CENTER ("MCGC"), a nursing home located in Trenton, New Jersey.

7. Defendant MERCER COUNTY is the entity charged by the laws of the State of New Jersey with authority to operate the MCGC and is responsible for the living conditions and health and safety of persons living in MCGC.

8. Defendant BRIAN M. HUGHES is the County Executive of Mercer County and serves as the chief executive of the County government. County Executive HUGHES is sued in his official capacity.

9. Defendant APRIL AARONSON is the Director of the Mercer County Department of Human Services. In her official capacity as Director, she is responsible for overseeing county services and

programs for the elderly, including the county operation at MCGC. Director AARONSON is sued in her official capacity.

10. Defendant ROBERT F. ECROYD is the Administrator of MCGC and is responsible for the nursing home's day-to-day operations. In his official capacity as Administrator, he has the custody, control, and charge of MCGC and MCGC residents. Administrator ECROYD is sued in his official capacity.

11. Defendants are legally responsible, in whole or in part, for the operation of MCGC, for the nursing home conditions, and the health and safety of persons confined or residing in the facility.

12. At all relevant times, Defendants acted or failed to act, as alleged herein, under color of state law.

FACTUAL ALLEGATIONS

13. MCGC is an institution within the meaning of 42 U.S.C. § 1997(1).

14. Mercer County receives federal Medicare and Medicaid funds for care provided at MCGC.

15. Persons institutionalized at MCGC are primarily geriatric residents, including both men and women, who have been placed in the facility to receive skilled nursing care. Many of the residents lack mobility, have significant mental impairments, or must rely on others for basic care.

16. Persons institutionalized at MCGC include "qualified individual[s] with a disability" for purposes of the Americans

with Disabilities Act, 42 U.S.C. § 12101 et seq., and implementing regulations.

17. Defendants and MCGC are "public entit(ies)" under the ADA and implementing regulations.

18. Defendants have failed and continue to fail to ensure MCGC residents' personal safety.

19. Defendants have failed and continue to fail to meet MCGC residents' basic nursing and direct care needs.

20. Defendants have failed and continue to fail to provide MCGC residents with adequate access to qualified medical care for treatment of serious medical conditions.

21. Defendants have failed and continue to fail to provide MCGC residents with adequate access to qualified mental health care for treatment of serious mental health problems.

22. Defendants have failed and continue to fail to provide residents with rehabilitation and restorative treatment necessary to restore, maintain, and improve living skills.

23. Defendants have failed and continue to fail to prevent the unreasonable use of restraints.

24. Defendants have failed and continue to fail to provide residents with adequate nutritional services, including staff mealtime assistance, weight loss prevention, and hydration programs.

25. Defendants have failed and continue to fail to provide adequate communicable disease prevention, infection control, and

a sanitary and safe living environment for MCGC residents.

26. Defendants have failed and continue to fail to safeguard MCGC residents' property.

27. Defendants have interfered with residents' ability to communicate with federal officials.

28. Defendants have failed and continue to fail to treat MCGC residents in the most integrated treatment setting appropriate to the residents' individual needs.

29. Defendants have been aware of the unlawful conditions alleged in paragraphs 18-28 for a substantial period of time and have failed to address adequately these conditions.

30. The unlawful conditions alleged in paragraphs 18-28 have resulted in serious injury, death, pain, suffering, and harm to MCGC residents including harm associated with improperly treated bedsores, serious falls, elopements, abuse, poor pain control, loss of mobility and living skills, infections, inadequately treated chronic and degenerative illness, serious mental illness, health conditions associated with aspiration, and undue restraint use.

VIOLATIONS ALLEGED

31. The acts and omissions alleged in paragraphs 18-30 constitute a pattern or practice that violates MCGC residents' federal rights as protected by the Constitution and laws of the United States.

32. Unless restrained by this Court, Defendants will continue to engage in the conduct and practices set forth in paragraphs 18-30 that deprive MCGC residents of their rights, privileges, or immunities secured or protected by the Constitution and laws of the United States.

COUNT I

33. The acts and omissions alleged in paragraphs 18-30 violate rights, privileges or immunities secured or protected by the First and Fourteenth Amendments to the Constitution of the United States.

COUNT II

34. The acts and omissions alleged in paragraphs 23 and 28-30 violate the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., and implementing regulations.

COUNT III

35. The acts and omissions alleged in paragraphs 18-30 violate the nursing home reform provisions of the Omnibus Budget and Reconciliation Act of 1987 (Act) and its implementing regulations. 42 U.S.C. § 1396r, 42 U.S.C. § 1395i-3, 42 C.F.R. § 483 Subpart B. Through their acts and omissions, Defendants have failed to provide "care for its residents in such matter and in such an environment as will promote maintenance or enhancement of the quality of life of each resident," and have further failed to provide "the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-

being (of each resident), in accordance with the comprehensive assessment and plan of care." 42 U.S.C. § 1396r(b)(1)(A); 42 C.F.R. § 483.25.

COUNT IV

36. The acts and omissions alleged in paragraphs 23 and 28-30 violate Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and implementing regulations.

PRAYER FOR RELIEF

37. The Attorney General is authorized under 42 U.S.C. § 1997 to seek equitable and declaratory relief.

WHEREFORE, the United States prays that this Court enter an order permanently enjoining Defendants, their officers, agents, employees, subordinates, successors in office, and all those acting in concert or participation with them from continuing the acts, omissions, and practices set forth in paragraphs 16-34 above, and that this Court require Defendants to take such actions as will ensure lawful conditions of institutionalization are afforded to residents of MCGC. The United States further prays that this Court grant such other and further equitable relief as it may deem just and proper.

Respectfully submitted,

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CERTIFICATE OF THE ATTORNEY GENERAL

I, ALBERTO R. GONZALES, Attorney General of the United States, certify that with regard to the foregoing Complaint, United States v. Mercer County, I have complied with all subsections of 42 U.S.C. § 1997b(a)(1). I certify as well that I have complied with all subsections of 42 U.S.C. § 1997b(a)(2). I further certify, pursuant to 42 U.S.C. § 1997b(a)(3), my belief that this action by the United States is of general public importance and will materially further the vindication of rights, privileges, or immunities secured or protected by the Constitution and laws of the United States.

In addition, I certify that I have the "reasonable cause to believe," set forth in 42 U.S.C. § 1997a, to initiate this action. Finally, I certify that all prerequisites to the initiation of this suit under 42 U.S.C. § 1997 have been met.

Pursuant to 42 U.S.C. § 1997a(c), I have personally signed the foregoing Complaint. Pursuant to 42 U.S.C. § 1997b(b), I am personally signing this Certificate.

Signed this 15th day of February, at Washington, D.C.

Alberto R. Gonzales
Attorney General
of the United States