IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

- -

DWAYNE ALMOND,

Plaintiff,

v.

GREGORY GRAMS, and
JANET WALSH,

Defendants.

OPINION and ORDER

06-C-0451-C

- -

This is a civil action for monetary relief brought under 42 U.S.C. § 1983. Plaintiff Dwayne Almond, a Wisconsin state inmate who suffers from severe mental illness, contends that defendants violated his Eighth Amendment rights by deliberately disregarding his mental health care needs. Jurisdiction is present. 28 U.S.C. § 1332.

Now before the court is defendants' motion for summary judgment in which they contend that they were not deliberately indifferent toward plaintiff's mental health care, and that they were not sufficiently personally involved in plaintiff's mental health care to be held liable under § 1983. I conclude that plaintiff cannot prevail on his claim that defendants violated his Eighth Amendment rights by acting with deliberate indifference to his serious mental health care needs. The undisputed facts reveal that plaintiff received extensive

mental health care at the Columbia Correctional Institution during the time period in which he contends that his Eighth Amendment rights were violated. Although the treatment may not have been optimal, or even in line with plaintiff's preferred course of treatment, plaintiff has not adduced enough evidence to allow a jury to find that the treatment was constitutionally inadequate.

The facts in this case are straightforward and largely undisputed. In those instances in which proposed findings of fact and responses constitute legal conclusions or are argumentive, I have ignored the proposals. Also, except as the facts are useful as background information, I have disregarded the proposed findings of fact and responses relating to the time periods before December 13, 2005, and after February 8, 2006 because it appears that plaintiff has abandoned any claims for those periods. His sole argument on summary judgment is that defendants were deliberately indifferent to his mental health care needs between December 13, 2005 and February 8, 2006. From the parties' proposed findings of fact and the record, I find that the following facts are material and undisputed.

UNDISPUTED FACTS

A. Parties

Plaintiff Dwayne Almond is a Wisconsin state inmate who suffers from mental illness. From October 4, 2005 to March 31, 2006, he was incarcerated at Columbia Correctional

Institution. During the time at issue in this lawsuit, plaintiff was housed at times in a unit primarily designed to house mentally ill inmates and inmates needing protection and at times in a segregation unit. Plaintiff has a long history of mental illness, including depression, substance abuse, a prior suicide attempt and prior psychiatric hospitalizations at Mendota and Winnebago Mental Health Institutes. Plaintiff also suffers from a personality disorder. Although plaintiff has been maintained for some time on antipsychotic medications, he has a history of poor compliance with medications.

During the time plaintiff was incarcerated at Columbia Correctional Institution, defendant Gregory Grams was the warden and oversaw all facility operations, including the provision of psychological services. Defendant Grams received and addressed inmate health concerns and requests and followed up on serious concerns to insure that they were dealt with appropriately. Defendant Grams did not supervise the day-to-day medical decisions of the health services department of the facility, but he did have general supervisory authority over facility operations. Defendant Grams did not order or provide clinical care for inmates.

Defendant Janet Walsh was the supervisor of the Psychological Service Unit at Columbia Correctional Institution under the warden's supervision during plaintiff's incarceration there. Defendant Walsh supervised psychological staff, provided psychological services to inmates, and participated with other Psychological Service Unit staff in structured

case conferences and staffing. Defendant Walsh did not prescribe medication.

B. Mental Health Treatment

The Columbia Correctional Institution's Psychological Service Unit provides most of the mental health care at the facility. During his incarceration plaintiff was typically seen by a psychologist once a week or more during rounds at his cell front and by a psychiatrist occasionally. During the weekly rounds, the visiting psychologist listened to the inmate's mental health concerns and observed plaintiff's behavior and symptoms of mental illness. During psychiatric visits, the psychiatrist would interview plaintiff, observe plaintiff's behavior and symptoms, discuss medication options and prescribe medicine when appropriate. Both the psychiatrists and psychologists took notes of their visits with plaintiff. Overall, plaintiff was seen five times by psychiatrists and 33 times by psychologists during rounds during his less than six months of incarceration at the Columbia Correctional Institution.

Defendant Grams was aware that plaintiff had been identified as having mental health problems before he came to Columbia Correctional Institution. Defendant Grams also received several complaints, or "Interview/Information Requests," from plaintiff regarding his mental health concerns. On all but one occasion, defendant Grams responded to plaintiff's complaints in writing. Copies of defendant Grams's written responses were sent

to the psychologists on the complaining inmate's unit for review and appropriate action during their ongoing clinical visits with plaintiff. Defendant Walsh was made aware of plaintiff's concerns about his mental illness and mental health treatment through letters and discussions about plaintiff.

On December 13, 2005, plaintiff was seen by psychiatrist Bret Reynolds. Dr. Reynolds noted that plaintiff was difficult to deal with and had acted inappropriately with staff, correctional officers and Dr. Reynolds. Dr. Reynolds noted that plaintiff's mental health history included depression, substance abuse, a prior suicide attempt and prior psychiatric hospitalizations. Dr. Reynolds believed that plaintiff had an antisocial personality disorder, and that it would be best to restart plaintiff on both mood stabilizing and antipsychotic medication, but he noted plaintiff's history of poor compliance with taking medications and current unwillingness to discuss his problems or restart on psychotropic medications. Reynolds planned to schedule plaintiff for periodic psychiatric follow up appointments to see whether he would be able to adjust to his current setting and improve his behavior, at which time medication trials might be discussed. He recommended that plaintiff be seen again by a psychiatrist in four to five weeks.

Also on December 13, during psychological rounds, plaintiff was responsive but the staff noted that plaintiff complained of "doing bad" and appeared angry. During rounds on December 21, staff noted that plaintiff was responsive and had no complaints. On

December 22, during rounds, staff noted that plaintiff was responsive, in a good mood and had no complaints, but did want to see the psychiatrist. On December 23, during rounds, staff noted that plaintiff was responsive, had no complaints and was in a good mood. On December 27, during rounds, staff noted that plaintiff was responsive and had no complaints.

On December 30, during rounds, staff noted that at first plaintiff was talkative and pleasant and had no complaints. However, plaintiff stated that he would not take medication because he was not court-ordered to do so, and he became loud and disruptive. On January 5, 2006, and on January 10, during rounds, staff noted that plaintiff was responsive and had no complaints. On January 11, during rounds, staff noted that plaintiff was responsive, and stated, "I'm not crazy, I'm mentally ill." He requested an appointment with the psychiatrist and wanted to take medication. On January 13, during rounds, staff noted that plaintiff was responsive and had no complaints. Staff made a note in the log that plaintiff had stated, "Ms. Dr. Walsh, this is Dwayne Almond again. I'm still trying to get back on my medication. I talked to Dr. Vandenbrook three times in a row." On January 18, during rounds, staff noted that plaintiff was responsive and had no complaints.

Plaintiff was seen by psychologist Kurt Schwebke on January 19. Schwebke's notes indicate that he reviewed plaintiff's file and conducted an interview with plaintiff. Regarding plaintiff's history, Schwebke noted:

> Inmate been (sic) seen while doing rounds on DS 1 [segregation unit]. He was moved there several weeks ago due to inappropriate, loud, threatening and disruptive behavior which resulted in him receiving a conduct report and disposition . . . . This clinician had contact with inmate on a weekly basis when he resided on HU 7 [unit for mentally ill]. His behavior progressively deteriorated during the time he was housed on that unit. Although some interactions initially were somewhat productive, he rapidly became more fractious. This typically consisted of him loudly complaining about being in segregation status, how his use of psychotropic medications in the past has caused him serious health problems, and generally castigating the correctional system, including psychological and psychiatric services.

Regarding the interview Schwebke had with plaintiff that day, his notes contain the following observations:

> During my rounds today the inmate immediately took issue with my presence on the tier. He loudly and angrily shouted at this provider that it was my fault that he was moved off HU7 and also accused me of "setting him up," because it was Dr. Reynolds instead of Dr. Callister who had seen last seen him to discuss him resuming his psychotropic medications. In addition to yelling obscenities at me, he was pounding and kicking on the door. Although I attempted to engage in dialogue with him he refused to do so. Eventually he shoved a number of treatment materials out of his room for me and said, "Take all of this stuff back! I don't want your (expletive)!" While taking the treatment articles, which I had previously given him for treatment purposes, I reminded him that these handouts and techniques were specifically for his behavior problems and that he was again refusing treatment. However he continued his tirade, which interfered with my ability to conduct my clinical rounds . . . .
>
> Inmate's mood was angry and his affect very hostile on today's date. His behavior was quite disruptive as he was observed to yell and threaten myself and others, and pounded and kicked his door and walls. Inmate's speech was quite loud and pressured. From the content of his current and past conversations it appears that this inmate has profound lack of insight and very poor judgment regarding his own attitudes or behavior. It is not believed that this is due to any thought disorder.

And regarding plaintiff's treatment needs and ability to respond to treatment, Schwebke

notes:

> In summary, it should be noted that myself and other PSU members have attempted on many occasions to help this inmate address his inappropriate behaviors, however he has consistently been argumentative and has refused to take any responsibility for his conduct or cooperate with any type of treatment whatsoever. Although inmate has a history of mental illness and antisocial personality disorder, this writer would note that his antisocial personality traits have been very prominent and an obstacle to any meaningful treatment at this time. He also continues to be non-compliant with medications, although it has been beneficial for him in the past . . . .
>
> According to his previous treatment plan, he has a number of needs, which include improving coping skills, anger management, education and medication compliance. This provider has provided him with materials in order to engage in therapy, such as Relaxation training, Anger Management and Coping with Voices. However he refused treatment when he was on SMU, such as reading and discussing treatment materials, and recently gave them back to his clinician when I was doing rounds on DS 1. Inmate has continued to refuse his psychotropic medications since 9/28/05, which included Haldol, Valproic Acid, Benztropine and Lorazepam, because he claimed injury from the medications (primarily diminished libido and liver damage). While he has a past diagnosis of mental illness, there is suspicion that he is likely malingering [feigning or exaggerating] symptoms of psychosis. He continues to demonstrate mood lability, poor emotional control and disruptive behavior but neither this clinician nor staff has observed psychotic symptoms such as thought disorder, disorganization, or responding to internal stimuli.

On January 20, during rounds, staff noted that plaintiff was responsive and had no complaints but that he wanted to see the psychiatrist. On January 27, during rounds, staff noted that plaintiff was responsive and had no complaints.

On January 30, plaintiff submitted an "Interview/Information Request," complaining that staff was hurting him, that the health services unit was refusing him treatment and that Psychological Service Unit staff would not help him with his mental illness. He also stated

that he had not eaten in three or more days. Defendant Grams responded on January 31, encouraging plaintiff to discuss his concerns regarding mental health treatment with Dr. VandenBrook during his regular rounds. Defendant Grams stated that he had no information regarding plaintiff's allegations that health services had refused him treatment. Defendant Grams stated that he should write directly to the manager, Ms. Sitzman, and provide detailed information regarding this matter so she could review and follow up appropriately. Defendant Grams also explained that if plaintiff refused to eat or drink, staff would respond, pursuant to IMP 300.07.

On February 2, during psychological rounds, Psychological Service Unit staff noted that plaintiff was responsive and had no complaints. On February 3, during rounds, plaintiff asked to see psychiatrist Callister, pointing out that he had been waiting for more than two weeks to see him. On February 7, during rounds, staff noted that plaintiff was responsive and had no complaints.

On February 8, plaintiff was seen by psychiatrist Dana Diedrich and psychologist Michael VandenBrook. Dr. Diedrich noted that plaintiff was alert, well groomed and oriented. Diedrich noted that plaintiff "demonstrated perceived persecution" and ruminated quite a bit about a different psychologist at the institution; however, plaintiff did not show signs of experiencing auditory or visual hallucinations. Finally, Dr. Diedrich noted that plaintiff was not willing to consider medications at that time and scheduled a follow up

session with plaintiff in four weeks "or sooner."

Defendant Walsh was aware of at least some of plaintiff's concerns about his mental illness and mental health treatment through letters and discussions about plaintiff. In particular, defendant Walsh recalls that plaintiff made a number of requests for mental health treatment and was "very demanding."

OPINION

A. Summary Judgment Standard

The standard for summary judgment is well known. Summary judgment is appropriate if there are no disputed issues of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). In deciding a motion for summary judgment, the court must view all facts and draw all inferences from those facts in the light most favorable to the non-moving party. Schuster v. Lucent Technologies, Inc., 327 F.3d 569, 573 (7th Cir. 2003). However, the non-moving party may not simply rest on its allegations; rather, it must come forward with specific facts that would support a jury's verdict in its favor. Van Diest Supply Co. v. Shelby County State Bank, 425 F.3d 437, 439 (7th Cir. 2005).

Defendants have moved for summary judgment on plaintiff's Eighth Amendment claim. Therefore, I must view all facts and draw all inferences from those facts in the light

most favorable to plaintiff.

B. Eighth Amendment Deliberate Indifference

The Eighth Amendment prohibits conditions of confinement that "involve the wanton and unnecessary infliction of pain" or that are "grossly disproportionate to the severity of the crime warranting imprisonment." Rhodes v. Chapman, 452 U.S. 337, 347 (1981). In addition, the Supreme Court has recognized that deliberate indifference to prisoners' serious medical needs constitutes the unnecessary and wanton infliction of pain proscribed by the Eighth Amendment. Estelle v. Gamble, 429 U.S. 97, 104-05 (1976).

The Eighth Amendment requires the government "to provide medical care for those whom it is punishing by incarceration." Snipes v. DeTella, 95 F. 3d 586, 590 (7th Cir. 1996) (citing Estelle, 429 U.S. at 103). Deliberate indifference to a prisoner's serious medical needs constitutes the unnecessary and wanton infliction of pain proscribed by the Eighth Amendment. Estelle, 429 U.S. at 104-05.

Defendants contend that they were not deliberately indifferent to plaintiff's mental health needs and that plaintiff received adequate mental health care while he was incarcerated at the Columbia Correctional Institution and, in particular, during the time period on which plaintiff focuses. Alternatively, defendants argue that they were not sufficiently personally involved in plaintiff's treatment to be liable under section 1983. In

order to defeat defendants' motion for summary judgment, plaintiff must adduce evidence from which a reasonable jury could infer that he had a serious mental health need (objective component) and that defendants were deliberately indifferent to this need (subjective component). Gutierrez v. Peters, 111 F.3d 1364, 1369 (7th Cir. 1997).

1. Serious mental health need

"Serious medical needs" encompass conditions that are life-threatening or that carry risks of permanent serious impairment if left untreated, those that result in needless pain and suffering when treatment is withheld and those that have been diagnosed by a physician as mandating treatment. Gutierrez, 111 F.3d at 1371-73. The need to treat a serious mental illness can qualify as a serious medical need. Sanville v. McCaughtry, 266 F.3d 724, 734 (7th Cir. 2001) (citation omitted). Defendants do not deny that plaintiff had serious mental health needs while he was confined at the Columbia Correctional Institution. Plaintiff suffers from a personality disorder and has a long history of mental illness, including depression, substance abuse, a prior suicide attempt and prior psychiatric hospitalizations. Plaintiff has been maintained for some time on antipsychotic medications. There is ample evidence from which a jury could infer that plaintiff's health care needs were serious. Thus, I turn to the question whether either defendant was deliberately indifferent to plaintiff's mental health care needs.

2. Deliberate indifference

The subjective element requires that the prison official act with a sufficiently culpable state of mind. Gutierrez, 111 F.3d at 1369. To show deliberate indifference, a plaintiff must establish that the official was "subjectively aware of the prisoner's serious medical needs and disregarded an excessive risk that a lack of treatment posed" to his health. Wynn v. Southward, 251 F.3d 588 (7th Cir. 2001). Where a risk is obvious, a factfinder may conclude a prison official was subjectively aware of the risk "from the very fact the risk was obvious." Greeno v. Daley, 414 F.3d 645, 653 (7th Cir. 2005) (citation omitted).

A plaintiff alleging deliberate indifference who has received medical care addressing his health care needs must show that the treatment he received was "so blatantly inappropriate as to evidence intentional mistreatment likely to seriously aggravate" plaintiff's serious medical condition. Snipes, 95 F.3d at 592. Mere disagreement with a doctor's medical judgment, Edwards v. Snyder, 478 F.3d 827, 831 (7th Cir. 2007), inadvertent error, negligence, malpractice or even gross negligence in providing treatment is insufficient to establish deliberate indifference. Washington v. LaPorte County Sheriff's Dept., 306 F.3d 515 (7th Cir. 2002).

Plaintiff argues that his inability to meet with a psychiatrist between his meeting with Dr. Reynolds on December 13, 2005 and his meeting with Dr. Diedrich on February 8, 2006, constituted deliberate indifference to his serious mental health care needs, because

only psychiatrists can prescribe medication, and he needed medication during this time. However, plaintiff's argument fails at the outset.

The facts reveal that during this period, plaintiff's mental health care needs were not being ignored. Plaintiff was seen by psychologists during rounds on December 21, 2005; December 22, 2005; December 23, 2005; December 27, 2005; December 30, 2005; January 5, 2006; January 10, 2006; January 11, 2006; January 13, 2006; January 18, 2006; January 19, 2006; January 20, 2006; January 27, 2006; January 30, 2006; February 2, 2006; February 3, 2006; and February 7, 2006.

The facts also reveal that when Dr. Reynolds met with plaintiff on December 13, he concluded that although plaintiff was not presently on psychotroptic medications, plaintiff had a poor history of compliance in taking his medications and was unwilling at that time "to engage in any constructive discussions about his problems and whether he wished to restart on psychotropic medications." Reynolds thought "it would be best" to restart plaintiff on a mood stabilizing medication, but he decided instead to schedule plaintiff for "periodic psychiatric follow-up appointments" to see whether plaintiff was adjusting to his setting and behaving more appropriately, "at which time medication trials may be discussed." Reynolds indicated that the follow-up plan was that plaintiff would be seen again by a psychiatrist in four to five weeks and evaluated for possible medication at that time. Nevertheless, plaintiff was not seen again by a psychiatrist until three weeks after the latest

time Reynolds had specified. However, plaintiff has produced no report from an expert in psychiatry indicating anything inappropriate about either Dr. Reynolds's decision to postpone medication on December 13, 2005 for four to five weeks or the total eight-week delay in seeing a psychiatrist rather than psychologists.

Plaintiff's failure to adduce any expert evidence would not be fatal to his case if the undisputed facts would allow a jury to draw an inference that between December 13, 2005 and February 8, 2006, plaintiff's need for immediate care by a psychiatrist was "so obvious that even a lay person would perceive the need." Edwards, 478 F.3d at 830-31 (citations omitted). Unfortunately for plaintiff, he has not made such a showing. True, he asked to see a psychiatrist five different times between December 13, 2005 and February 8, 2006: on December 22, January 11, January 13, January 20 and February 3. However, the record is devoid of evidence that on any of those occasions, plaintiff's need for a psychiatrist was so clear that the failure to honor his requests could be understood as deliberate indifference to his serious mental health care needs. Indeed, on December 22, plaintiff was observed to be "in a good mood and had no complaints"; on the other four dates, he was observed to be responsive with no complaints.

On two of the occasions when plaintiff asked to see a psychiatrist (January 11 and January 13, 2006), he also expressed a desire to resume taking his medications. By itself, however, plaintiff's stated desire to resume his medications does not suffice to meet his

burden of adducing enough evidence to allow a jury to find that defendants' failure to insure that he was prescribed medication as soon as he asked for it constituted deliberate indifference to his serious mental health care needs. The facts reveal that plaintiff's desire to take medications waxed and waned. During the same time period, on December 30 and February 8, plaintiff indicated clearly that he would not take medications.

In light of plaintiff's history of non-compliance with taking his medications, plaintiff's behavior between December 13 and February 8 might be a more accurate indication of the effect of the failure to provide him with additional psychiatric visits or medication. For example, if the facts were to show that plaintiff was eating or smearing feces, expressing suicidal ideation, hallucinating, hearing voices or depriving himself of food or water, a juror might be able to conclude that plaintiff's need for a psychiatrist or medication or both was obvious. But plaintiff did not put in any evidence that he engaged in psychotic behavior during the relevant time frame. Instead, the facts show that plaintiff engaged in inappropriate behavior on only two occasions. On December 30, the same day he indicated he would not take medication, he was loud and disruptive. He was loud and disruptive again on January 19 during his visit with psychologist Schwebke, but Schwebke did not observe psychotic symptoms. Instead, he believed plaintiff to be malingering. And although the facts show that plaintiff reported to defendant Grams on January 30, 2006, that he had not eaten in three days, plaintiff did not supply facts to show that he did stop eating in fact. In

light of plaintiff's failure to meet his burden of supplying either expert testimony or facts from which a layman could conclude that plaintiff's need for more frequent psychiatrist visits or a prescription for medication was obvious, plaintiff cannot succeed on his claim that between December 13, 2005 and February 8, 2006, his Eighth Amendment right to adequate mental health care was violated.

Plaintiff has failed to establish that he needed immediate care by a psychiatrist. Therefore the facts do not allow an inference to be drawn that the treatment he did receive was "blatantly inappropriate" or demonstrated a "culpable state of mind" on the part of defendants.

3. Personal involvement

Even if plaintiff could establish that his mental health treatment was so blatantly inappropriate that it constituted deliberate indifference, he would not survive summary judgment because he has failed to show that defendants were sufficiently personally involved in his treatment between December 13, 2005 and February 8, 2006 to be liable under § 1983.

To recover damages under § 1983, a plaintiff must establish that a defendant was personally responsible for the deprivation of a constitutional right. Sheik-Abdi v. McClellan, 37 F.3d 1240, 1248 (7th Cir. 1994). Defendants cannot be held personally liable under a

theory of respondeat superior. Jones v. City of Chicago, 856 F.2d 985, 992 (7th Cir. 1988). However, where an official knows about the conduct and facilitates it, approves it, condones it, or turns a blind eye to it, the official satisfies the personal responsibility requirement of section 1983. Gentry v. Duckworth, 65 F.3d 555, 561 (7th Cir. 1995). For communications to a prison official to establish personal involvement, the communications must give the prison official sufficient notice to alert him or her to an excessive risk to inmate health or safety, and the official must refuse or decline to exercise the authority of his or her office. Vance v. Peters, 97 F.3d 987, 992-93 (7th Cir. 1996).

Plaintiff argues that defendants had sufficient personal involvement in the claimed denial of treatment because they had supervisory roles and were informed of plaintiff's mental health concerns by the staff working directly with plaintiff. However, the facts do not allow an inference to be drawn that an"excessive risk" to plaintiff's health or safety became clear to defendants through plaintiff's one-time communication with defendant Grams and whatever general information defendant Walsh may have been receiving between December 13, 2005 and February 8, 2006. Plaintiff's sole communication with defendant Grams during that time period was the Interview/Information Request plaintiff sent on January 30, 2006, in which he indicated that Psychological Service Unit staff would not help him with his mental illness and that he had not eaten in three or more days. However, these complaints do not make clear that plaintiff was at excessive risk because he was seen only

by psychologists and not by a psychiatrist.

As for defendant Walsh, plaintiff has not adduced any evidence that she received specific information about his treatment between December 13, 2005 and February 8, 2006. The facts establish only that defendant Walsh supervised the psychological staff who treated plaintiff and that she was aware that plaintiff had made a number of requests for mental health treatment at some time and was "very demanding." It is true that during rounds on January 13, 2006, a psychologist recorded a statement from plaintiff to the following effect: "Ms. Dr. Walsh, this is Dwayne Almond again. I'm still trying to get back on my medication. I talked to Dr. Vandenbrook three times in a row." However, there is no evidence that defendant Walsh ever saw the psychologist's log of plaintiff's statement, or that if she did, she could infer from the statement that a failure to arrange for an immediate visity by a psychiatrist or to provide medication would put plaintiff at serious risk of harm.

Although both defendants had some supervisory authority over those providing direct services to plaintiff, it is not clear whether and when defendants were informed of plaintiff's other requests for medication or his behavioral problems during the crucial time period. Therefore, plaintiff has failed to adduce facts from which defendants' personal involvement could be inferred.

Because plaintiff has failed to adduce evidence from which it could be inferred that the treatment he received at Columbia Correctional Institution between December 13, 2005

and February 8, 2006 was so blatantly inappropriate as to constitute deliberate indifference and that defendants were personally involved in plaintiff's treatment, I will grant defendants' motion for summary judgment.

ORDER

IT IS ORDERED that the motion for summary judgment filed by defendants is GRANTED as to plaintiff Dwayne Almond's claims that they violated his rights under the Eighth Amendment by denying him adequate mental health care. The clerk of court is directed to enter judgment for defendants and close this case.

Entered this 14th day of September, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge