UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, ADMINISTRATOR OF THE ESTATE OF G.W., R.H., T.W., T.F., D.H., B.C., and A.L. by next friend Norma Labounty.

Plaintiffs,

Civil Docket No. 2:21-cv-283

V.

KENNETH SCHATZ, KAREN SHEA, CINDY WOLCOTT, BRENDA GOOLEY, JAY SIMONS, ARON STEWARD, MARCUS BUNNELL, JOHN DUBUC, WILLIAM CATHCART, BRYAN SCRUBB, KEVIN HATIN, NICHOLAS WEINER, DAVID MARTINEZ, CAROL RUGGLES, TIM PIETTE, DEVIN ROCHON, AMELIA HARRIMAN, EDWIN DALE, MELANIE D'AMICO, ERIN LONGCHAMP, CHRISTOPHER HAMLIN, and ANTHONY BRICE, all in their individual capacities.

Defendants.

COMPLAINT AND JURY TRIAL DEMAND

INTRODUCTION

Between 2016 and 2020, juveniles detained at the Woodside Juvenile Rehabilitation Center in Essex, Vermont and the Middlesex Adolescent Center were subjected to obscene abuse at the hands of state officials who were charged with their care and supervision. On a regular basis, vulnerable children, some of whom had been physically, mentally, and/or sexually abused by caregivers before they were taken into state custody and sent to Woodside, were physically assaulted and sometimes stripped of their clothing by Woodside staff members who demanded compliance with their orders. Many times, these same children were then confined to isolation cells in Woodside's so-called "North Unit" for days, weeks, and sometimes months at a time.

Complaints regarding this misconduct were investigated and substantiated by state investigators who, by October 2018, informed state officials that the abuse violated state regulations and had to stop. Despite these warnings, state officials in charge of Woodside disregarded the findings and continued to abuse and isolate vulnerable children through August 2019, when a federal court issued an injunction ordering a halt to such practices.

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Even though the court ordered a halt to the abusive tactics developed by Jay Simons for use against Woodside detainees, the abuse of children by DCF staff members then continued at a different facility in Middlesex, Vermont. An internal investigation into the assault of one of these children in April 2020 revealed that Woodside/Middlesex Adolescent Center Director Simons was actively "sabotaging" the implementation of a different crisis management system in an effort to prove that "what they were doing [before federal court intervention] was good."

This lawsuit is brought on behalf of seven young people who were abused by DCF staff members at Woodside and the Middlesex Adolescent Center. Sadly, one of these vulnerable victims, G.W., died of an accidental drug overdose in October 2021. Her claim is being pursued by her estate, which was established for the sole purpose of pursuing justice in her memory.

In addition, DCF sent two of these young people to an out-of-state facility in Tennessee called Natchez Trace Youth Academy where they suffered physical and emotional abuse by its staff members. Specific complaints about the mistreatment of one of these boys in 2017 were disregarded by DCF employees months before DCF sent the second boy to Natchez Trace where he suffered similar abuse.

PARTIES

1. Plaintiff Cathy Welch is a resident of Corinth, Vermont and was appointed administrator of the Estate of G.W. by the Orange County Probate Court on December 5, 2021.

2. Plaintiff R.H. is over the age of 18 and, at all times relevant to this Complaint, was a resident of Vermont.

3. Plaintiff T.W. is over the age of 18 and, at all times relevant to this Complaint, was a resident of Vermont.

4. Plaintiff T.F. is over the age of 18 and, at all times relevant to this Complaint, was a resident of Vermont.

5. Plaintiff D.H. is over the age of 18 and, at all times relevant to this Complaint, was a resident of Vermont.

6. Plaintiff B.C. is over the age of 18 and, at all times relevant to this Complaint, was a resident of Vermont.

7. Plaintiff A.L. is a minor who resided in Vermont at all times relevant to this Complaint and his claims are brought on his behalf by his mother, Norma Labounty.

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8. Defendant Kenneth Schatz was the Commissioner of Vermont's Department for Children and Families (DCF) at all times relevant to this Complaint.

9. Defendant Karen Shea was a Deputy Commissioner of Vermont's Department for Children and Families at all times relevant to this Complaint.

10. Defendant Cindy Wolcott was a Deputy Commissioner of Vermont's Department for Children and Families at all times relevant to this Complaint.

11. Defendant Brenda Gooley was the Director of Policy and Operations of Vermont's Department for Children and Families at all times relevant to this Complaint.

12. Defendant Jay Simons was the Director of the Woodside Juvenile Rehabilitation Center, Essex, Vermont at all times relevant to this Complaint.

13. Defendant Kevin Hatin was Operations Supervisor at the Woodside Juvenile Rehabilitation Center, Essex, Vermont at all times relevant to this Complaint.

14. Defendant Aron Steward was the Clinical Director at the Woodside Juvenile Rehabilitation Center, Essex, Vermont at all times relevant to this Complaint.

15. Defendant Marcus Bunnell was an Operations Supervisor at the Woodside Juvenile Rehabilitation Center, Essex, Vermont at all times relevant to this Complaint.

16. Defendant John Dubuc was an Operations Supervisor at the Woodside Juvenile Rehabilitation Center, Essex, Vermont at all times relevant to this Complaint.

17. Defendant William Cathcart was a staff member at the Woodside Juvenile Rehabilitation Center, Essex, Vermont at all times relevant to this Complaint.

18. Defendant Bryan Scrubb was a staff member at the Woodside Juvenile Rehabilitation Center, Essex, Vermont at all times relevant to this Complaint.

19. Defendant Nicholas Weiner was a staff member at the Woodside Juvenile Rehabilitation Center, Essex, Vermont at all times relevant to this Complaint.

20. Defendant David Martinez was a staff member at the Woodside Juvenile Rehabilitation Center, Essex, Vermont at all times relevant to this Complaint.

21. Defendant Carol Ruggles was a staff member at the Woodside Juvenile Rehabilitation Center, Essex, Vermont at all times relevant to this Complaint.

22. Defendant Tim Piette was a staff member at the Woodside Juvenile Rehabilitation Center, Essex, Vermont at all times relevant to this Complaint.

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23. Defendant Devin Rochon was a staff member at the Woodside Juvenile Rehabilitation Center, Essex, Vermont at all times relevant to this Complaint.

24. Defendant Amelia Harriman was employed by DCF at all times relevant to this Complaint.

25. Defendant Melanie D'Amico was employed by DCF at all times relevant to this Complaint.

26. Defendant Edwin Dale was employed by DCF at all times relevant to this Complaint.

27. Defendant Erin Longchamp was employed by DCF at all times relevant to this Complaint.

28. Defendant Christopher Hamlin was employed by DCF at all times relevant to this Complaint.

29. Defendant Anthony Brice was employed by DCF at all times relevant to this Complaint.

JURISDICTION AND VENUE

30. This Court has original jurisdiction of this action pursuant to 28 U.S.C. §1331, as it presents a federal question, and 28 U.S.C. §1343(a)(3).

31. Venue is proper pursuant to 28 U.S.C. §1391(b), as this is the judicial district in which the events related to this Complaint occurred.

CONDITIONS AT WOODSIDE

32. DCF's Woodside Juvenile Rehabilitation Center "shall be operated by the Department for Children and Families as a residential treatment facility that provides in-patient psychiatric, mental health, and substance abuse services in a secure setting for adolescents who have been adjudicated or charged with delinquency or criminal act." 33 V.S.A. § 5801(a).

33. Juveniles detained at Woodside were informed that they would be "treated in an appropriate way" and that Woodside is "violence free – free of fighting, slapping, hitting, or physical contact in any way."

34. Juveniles detained at Woodside were further informed that they had a right to (a) a "humane and safe environment;" (b) "[f]reedom from abuse, neglect, retaliation ("pay-back"), humiliation, harassment, and exploitation," and that "Woodside

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prohibits all cruel, severe, unusual, and unnecessary physical intervention and seclusion," and that physical restraints and seclusion would only be used as a "last resort."

35. From the outside, Woodside resembled an adult prison and had three living units. The main units, East and West, housed between 13 and 15 residents each. These units contained "dry rooms" or cells that lack plumbing. Woodside detainees assigned to the East and West Units were locked in their rooms at night and at designated times during the day. During the day, detainees in the East and West Units were allowed to congregate in large communal "day rooms" for group activities.

36. Woodside's "North Unit" contained three "wet rooms" or cells that had a sink and a toilet. The "wet rooms" eliminated the need to let a detainee held in one of these isolation cells out to use the bathroom. The North Unit also contained a padded "safe room" that was typically used for seclusion and a small windowless "day room" containing a shower and a table. Woodside staff members performed strip searches of detainees in the North Unit's "day room."

37. Woodside detainees who engaged in disruptive, aggressive, or self-harming behaviors would be confined to North Unit for days or weeks without access to education, recreation, or regular programming. Sometimes, detainees isolated in the North Unit would not be permitted to leave their cell to access the day room or shower.

38. Woodside detainees confined in the North Unit were not allowed to flush their toilets and had to ask staff to flush away their waste. Detainees would sometimes have to sit with unflushed human waste for significant periods of time.

39. Woodside detainees confined to the North Unit had an earlier bedtime than detainees held in the East or West Units and could not choose their own food. North Unit's detainees thus had to eat what staff members delivered to the isolation cells.

40. In some situations, Woodside detainees held in the North Unit were not allowed to have any possessions in their isolation cells, including a mattress, bedding, books, or paper and pencil.

41. On occasion, Woodside detainees held in the North Unit had their clothing cut off or otherwise removed and were left in isolation cells wearing nothing but their underwear or paper gowns. Sometimes children were left nude or without clothing from the waist down. For example, G.W. was held naked overnight on more than one occasion, and B.C. was naked from the waist down for two full days.

42. After he was named Woodside's director in 2011, Defendant Simons introduced a use-of-force system he called "Dangerous Behavior Control Tactics" (DBCT) that

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had been used in adult prison facilities where he had been a use-of-force instructor for the Department of Corrections.

43. Under the direction of Defendant Simons, Woodside staff members, including Defendants Weiner, Martinez, and Rochon, would apply rotational pressure to a juvenile's joints, including wrists, shoulders, and knees, and hyperextend shoulder and rotator cuff muscle groups.

44. The use of Simons' techniques sometimes caused excruciating pain that could lead to swelling and the possibility of limited range of motion.

45. The pain compliance techniques employed at Woodside are contrary to national standards and Vermont law that prohibit the use of "pain inducement to obtain compliance" and "hyperextension of joints." VT ADC 12-3-508: 600 (648).

46. In October 2016, an attorney from the Office of the Juvenile Defender registered a complaint with Defendant Dale about the placement of Woodside detainees in isolation cells "for weeks on end – the isolation is bad for their mental health."

47. Defendant Dale forwarded the Juvenile Defender's complaint to Defendants Simons and Steward.

48. When the Office of the Juvenile Defender registered complaints about the conditions of confinement at Woodside, Woodside officials retaliated against the juveniles on whose behalf the complaints had been made, interfered with their right to counsel, and pressured at least one of them to sign notes to his attorneys indicating that they should withdraw a motion for a protective order filed in the Vermont Superior Court, Family Division.

49. No later than July 2018, DCF management officials, including Defendants Schatz, Shea, and Gooley, were aware of the conditions of confinement in Woodside's North Unit and the physical abuse of Woodside residents for a number of reasons.

50. Between May 2018 and July 2019, the Defender General's Office of the Juvenile Defender filed a series of motions in Vermont's family courts requesting orders prohibiting Woodside staff from using excessive restraints and pain compliance techniques against Woodside detainees and housing detainees in the North Unit's isolation cells.

51. In May 2018, the Office of the Juvenile Defender filed a Motion for a Protective Order in the Vermont Superior Court, Rutland Family Division, on behalf of T.W.

52. The Juvenile Defender's motion asked the court to order "the Commissioner of the Department for Children and Families and his agents to stop restraining [T.W.] unnecessarily and in violation of state regulations, stop using dangerous restraint techniques designed to induce pain …"

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53. In July 2018, the Office of the Juvenile Defender filed a Motion for a Protective Order in the Vermont Superior Court, Franklin Family Division, on behalf of R.H., who was a Woodside detainee.

54. The Juvenile Defender's motion asked the court to order "the Commissioner of the Department for Children and Families and his agents to stop subjecting [R.H. to] unnecessary physical restraint, stop using dangerous restraint techniques designed to induce pain, stop subjecting him to seclusion and solitary confinement in violation of applicable state regulations…"

55. In June 2019, the Defender General's Office of the Juvenile Defender filed a Verified Motion for a Protective Order in the Vermont Superior Court, Chittenden Family Division, on behalf of G.W.

56. The Juvenile Defender's verified motion indicated that her client, who was a Woodside detainee, was subjected to excessive restraint and seclusion and the forcible removal of her clothing and was forced to remain naked in the presence of a male staff member.

57. The Juvenile Defender's motion asked the court to order "the Commissioner of the Department for Children and Families and his agents from confining [G.W.] in Woodside's segregation unit, subjecting her to excessive restraint and seclusion, subjecting her to forcible removal of her clothing, forcing her to remain naked in the presence of male staff…"

58. The Juvenile Defender's verified motion included an affidavit executed by Paul Capcara, R.N., that reviewed Woodside's conditions of confinement, describing in detail the use of pain compliance techniques and the excessive and inappropriate use of solitary confinement, to the detriment of Woodside detainees who were subject to these conditions of confinement.

59. Capcara's affidavit ended with this statement: "I have repeatedly testified about my concerns regarding the unusual and harmful practices at Woodside for over a year. DCF's leadership has known about these dangerous conditions as the result of my testimony and that of other expert witnesses, as well as their own internal investigations. Despite this knowledge, the dangerous and harmful practices persist."

60. DCF's Residential Licensing & Special Investigations Unit (RLSIU) was responsible for conducting investigations into complaints related to the conditions of confinement at Woodside.

61. On October 23, 2018, DCF held a Woodside Stakeholder Meeting. Defendant Schatz attended the meeting. The following day, the Juvenile Defender sent Defendant Schatz a follow-up email detailing the deplorable conditions of confinement.

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62. In that email, the Juvenile Defender explained to Defendant Schatz that "I have seen things at [Woodside] that if perpetrated by a parent, would have likely resulted in substantiation, removal [of the child from the home], and criminal prosecution. As a former DCF investigator, it takes a lot to shock and dismay me. I am shocked and dismayed at Woodside on a regular basis. Moreover, the lack of accountability for staff who hurt residents and perpetrate a culture of silence in the face of resident mistreatment is deeply troubling."

63. In October 2018, after RLSIU investigated complaints related to the treatment of R.H., T.W., T.F., and B.C. at Woodside, RLSIU investigators filed reports concluding that Woodside staff members violated Vermont law.

64. In particular, RLSIU concluded that Woodside's attempt to silence R.H. violated Regulation 201; the use of Defendant Simons' pain compliance techniques violated Regulation 648; depriving detainees meals, water, rest, or opportunity for toileting violated Rule 648; the repeated use of physical restraints without due cause violated Rule 651; the failure to constantly monitor detainees in solitary confinement violated Rule 660; the failure to regularly flush the toilets in North Unit's isolation cells violated Regulation 718; and the use of North Unit's isolation rooms to seclude Woodside's detainees violated Regulation 718.

65. The RLSIU investigators informed the "Governing Authority", i.e., DCF, that it had to "provide RLSIU a plan to address the identified areas of Non-Compliance and areas of Compliance, but with Reservations, with the intent to come into full compliance [with Vermont's Residential Treatment Program Regulations] by November 16, 2018."

66. In November 2018, after RLSIU investigated a different complaint filed by the Juvenile Defender on behalf of T.W., the investigators concluded that Woodside staff members violated Vermont law.

67. In particular, based on this investigation, RLSIU concluded that Woodside's use of Defendant Simons' pain compliance techniques violated Regulation 648 and 650; Woodside's inappropriate use of restraints violated Regulation 651; and Woodside's failure to monitor T.W. when she was placed in a North Unit seclusion cell violated Regulation 660.

68. Based on this investigation, RLSIU investigators informed the "Governing Authority," i.e., DCF, that it had "to provide RLSIU a plan to address the identified areas of Non-Compliance and areas of Compliance, but with Reservations, with the intent to come into full compliance [with Vermont's Residential Treatment Program Regulations] by November 16, 2018."

69. On August 31, 2018, Paul Capcara filed a complaint with RLSIU indicating that he had reviewed a video recording of staff members as they physically restrained a detainee while placing her in the North Unit.

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70. According to the complaint, the video showed the male staff members who restrained the young woman, leaving her naked from the waist down in her isolation cell.

71. A psychologist further reported that the detainee was not provided with bedding or adequate clothing or coverage for her lower body for 48 hours.

72. RLSIU investigators reported that they had reviewed three videos of the incident. The investigators provided the following description of the third video:

> "[Defendant] Hatin debriefs with the camera and says 'Ok, per [Defendant] Steward and [Defendant] Simons, any loose clothing that has been ripped, based on [the detainee's] history we were directed to remove it from her room…' He talks to [the detainee] through the door and asks 'Are you going to hand it to me or not?' [Defendant] Hatin waits 5 seconds (as counted on the video) and responds, 'Well we'll take that as a "no".' Then [Defendant] Hatin and two other male staff members enter the room and begin struggling to restrain [the detainee] as she is screaming 'Don't touch me.' One male staff member is at a tug of war with [the detainee] for the ripped sweatpants. During this time, [the detainee] is being moved around on the floor with her buttocks and vulva exposed. [A youth counselor] removes partial elastic from [the detainee's] upper torso with a cutting tool. As the restraint is ending, [the detainee] is silent in the fetal position."

73. After completing the investigation into Capcara's complaint, RLSIU investigators concluded that Woodside violated Regulation 201 when B.C. "was left with the lower half of her body uncovered for two days. [B.C.] was not provided a mattress, blanket or safety smock. [B.C.] was restrained and secluded without appropriate therapeutic supports." Furthermore, there was "no justification for the removal of [B.C.'s] bedding and food. [B.C.] was left without clothing for the lower half of her body for two days," in violation of Regulation 648.

74. The RLSIU investigators also concluded that Woodside was in violation of Regulation 650 when staff members inappropriately restrained the female detainee.

75. Based on this investigation, RLSIU investigators informed the "Governing Authority," i.e., DCF, that DCF had to "provide RLSI a plan to address the identified areas of Non-Compliance and Compliance, but with Reservations, with the intent to come into full compliance [with Vermont's Residential Treatment Program Regulations] by November 16, 2018."

76. Despite these orders, DCF took no concrete steps to require Woodside "to come into full compliance [with Vermont's Residential Treatment Program Regulations]" and end the inappropriate use of physical restraints, the use of Defendant Simons' pain compliance techniques, or the inappropriate use of solitary confinement.

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77. In fact, in response to RLSIU's detailed investigative reports, Defendants Schatz and Shea refused to acknowledge that physical or emotional abuse of Woodside detainees was an on-going problem at that facility.

78. In a letter dated November 16, 2018, Defendants Schatz and Shea made the following commitments:

- "Retaliation is not acceptable and we do not believe that it is a pervasive issue at Woodside."
- "Trauma informed de-escalation strategies are an important component to the program that hopefully will result in very few to zero incidents of restraint and seclusion. Woodside is examining and re-evaluating its current de-escalation strategies as part of the review of restraint modality at Woodside."
- "The use of emergency safety interventions is an area that Woodside is committed to continuously improve."
- "With respect to concerns regarding Woodside's use of the North Unit, we do not have any specific corrective actions with respect to these observations until we decide the future of Woodside and its role in the system of care."

79. Defendants Schatz and Shea then described why they disagreed with "a number of individual findings and conclusions drawn from [RLSIU's detailed] reports."

80. Defendants Schatz and Shea did not specifically identify what findings they disagreed with but instead claimed that the unspecified findings resulted from a number of factors, including "[i]nappropriate acceptance of allegations," "lack of details and input from all individuals involved," and "lack of understanding or analysis related to the traumatic impact ***staff*** experience from these situations." (Emphasis added).

81. As a result of Defendants Schatz's and Shea's failure to fulfill their statutory and constitutional obligations to protect the safety and welfare of Woodside detainees seriously, the abuse of those children continued unabated.

82. Nothing demonstrates Defendants Schatz's, Shea's, Gooley's, and Simons' deliberate indifference for the constitutional rights of juveniles detained at Woodside more than a video recording of the shocking and inhumane treatment of G.W. in July 2019.

83. "This video was shot from the corridor outside a cell. It shows a horrific incident involving a teenage girl about 16 years old. The girl is completely naked. The girl is streaked with excrement. She is agitated and has moments of angry accusation followed by wild laughter. She is obviously in the middle of an acute mental crisis. In the course of the video, she is moved a few feet from a cell or anteroom into a white tiled space. The staff who moved her are dressed in "haz-mat" suits and hoods. They are all men except for a woman who can be heard in the background. They push a concave plastic shield against the girl's body and push

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her from the anteroom into the tile space where the door is locked. A female staff member can then be heard talking to the girl, who is occupied in pushing a wire into her right forearm. The girl is asked why she is doing that. No one interrupts this action on the video. The treatment of this girl is entirely inappropriate and demonstrates within a few minutes Woodside's limited ability to care for a child who is experiencing symptoms of mental illness." *Disability Rights v. State of Vermont*, 19-cv-106, Doc. 34, p. 11.

84. An EMT who responded to a call from Woodside to check G.W. for a possible concussion called DCF's child abuse hotline and reported that G.W. was naked, covered in feces, urine, and menstrual blood, and was nearing hypothermia.

CONDITIONS OF CONFINEMENT
NATCHEZ TRACE JUVENILE ACADEMY

85. In a letter dated May 21, 2015, the West Virginia Department of Health and Human Resources notified Tom Hennessey, CEO of Natchez Trace Youth Academy, that the state had decided to suspend placement of West Virginia children at that facility.

86. An investigation undertaken by the West Virginia Department of Education indicated that the facility was loud and chaotic; the facility's direct care staff was unprofessional; teachers were unprepared during instruction; West Virginia's students did not feel safe at the facility; staff would take students away from the view of cameras and beat them up; and cottages where students lived were dirty and in poor condition.

87. Vermont children placed by DCF at Natchez Trace reported similar problems at that facility.

88. In July 2017, the Office of the Juvenile Defender informed Defendant Erin Longchamp that D.H. was subjected to an off-camera restraint during which a staff member kicked him in the testicles, and D.H. was repeatedly threatened with physical harm.

89. In one instance, a staff member warned D.H that "if you move, I'll break your neck."

90. D.H. reported that the place was filthy and was only cleaned up when DCF staffers made scheduled visits to the facility.

91. In September 2017, the Office of the Juvenile Defender contacted Defendant Melanie D'Amico, DCF's Residential Services Manager, and explained in detail the conditions at Natchez Trace and the abuse of D.H. at that facility.

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92. Defendant D'Amico responded by telling the Office of the Juvenile Defender that she was "worried that these overgeneralization (sic) you are making are not helpful and undermine the good work the Natchez Trace program is and has done. Only positive experiences have been reported to me."

93. In or about 2017, the mother of a child placed at Natchez Trace by DCF reported the abuse of her child at that facility to Defendants Schatz, Wolcott, and D'Amico.

94. The mother apparently reported that a staff member at that facility was "choking kids out" and that her child had been subjected to physical abuse and suffered injuries at the hands of staff members.

95. The mother reported this abuse to DCF, but DCF staff members did not believe the complaints.

96. DCF officials, including Defendants Schatz, Wolcott, and D'Amico, apparently did not take these complaints seriously and instead continued to place children in its custody, including R.H., at Natchez Trace Juvenile Academy.

THE EFFECTS OF SOLITARY CONFINEMENT ON JUVENILES

97. Stuart Grassian, M.D., is a board-certified psychiatrist who has studied the effects of solitary confinement on juveniles. Dr. Grassian's observations and conclusions generally regarding this population and the psychiatric effects of solitary confinement have been cited in a number of federal court decisions, including *Davenport v. DeRobertis,* 844 F.2d 1310 (7th Cir. 1988), *Coleman v. Wilson, 912* F.Supp. 1282 (E.D. Cal., 1995), affirmed sub. nom. *Brown v. Plata,* 131 S. Ct. 1910 (2011), *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995), and in opinions by Justices Kennedy, Sotomayor, and Brennan in the United States Supreme Court.

98. In a report prepared for Plaintiffs' counsel in this case, Dr. Grassian made the following observations:

99. Solitary confinement of juveniles causes far greater harm in juveniles than in adults, and the risks of solitary confinement to juveniles are alarming. Research on adolescent development makes clear why juvenile solitary confinement is uniquely harmful.

100. New technologies in brain research have allowed us to recognize and observe brain plasticity, that brain function and neural connectedness are still evolving and developing during adolescence, especially so in regard to the functioning of the prefrontal cortex – that part of the brain most centrally involved in inhibiting emotional reactivity, allowing mastery over the emotional reactivity of the subcortical amygdala and nucleus accumbens - the brain's more primitive emotional centers.

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101. Brain research, both human and animal studies, has amassed a clear picture of this process[1] and there is clear evidence that this process of brain development can be derailed by stress.

102. The effects of stress on adolescent brain development has been described in detail,[2] and there is by now a substantial body of research describing the severe lasting effects of stress on the human brain, and the particular vulnerability of juveniles to such effects.[3]

103. There has also been a large body of research using animal models,[4] demonstrating long-term consequences of chronic unpredictable stress.

104. The research has demonstrated that the brain's reaction to stress, the surge of cortisol (the stress hormone) modulated through the brain's hypothalamic-pituitary-axis, is massively affected in adolescents who have experienced chronic stress.

105. Research further demonstrates that acute stress impairs the juvenile's ability to maintain goal-directed, as opposed to emotion-driven, behavior.[5] Functional brain studies have provided evidence that while adults are able to engage prefrontal cortical mechanisms to inhibit behavior that is likely to have adverse consequences, adolescents are unable to do so.[6] These consequences – including actual morphological changes in brain structure – have been demonstrated to persist into adulthood.[7]

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[1] *See, e.g.:* Casey, B.J., Jones, R.M., and Hare, T.A., (2008) *The Adolescent Brain,* Ann. N.Y. Acad. Sci. 1124: 111-126; Ernst, M., Mueller, S.C. (2008) *The adolescent brain: Insight from functional neuroimaging research.* Dev. Neurobiol 68(6) 729-743.

[2] *See, e.g.:* Tottenham, N., Galvan, A. (2016) *Stress and the adolescent brain. Amygdala-prefrontal cortex circuitry and ventral striatum as developmental targets.* Neuroscience and Biobehavioral Reviews 70:217-227.

[3] For a detailed discussion and bibliography, see, e.g. Bremner,J. (2006) *Traumatic Stress: effects on the brain.* Dialogues in Clinical Neuroscience; Vol. 8, No. 4, 445-461

[4] The harm caused animals by experimentation involving social isolation has in fact led to restrictions of such experimentation by academic review boards. For example, Columbia University has passed rules severely restricting the housing of experimental animals alone in cages.

[5] *See, e.g.:* Plessow, F. et.al. (2012) *The stressed prefrontal cortex and goal-directed behaviour; acute psychosocial stress impairs the flexible implementation of task goals.* Exp Brain Res 216:397-408.

[6] Uy, J., Galvan, A. (2016) *Acute stress increases risky behavior and dampens prefrontal activation among adolescent boys.* J. Neuroimage, http??dx.doi.org/10.1016/j.neuroimge.2016.08.067

[7] *See, e.g.* Hollis, F. et.al. (2012) *The Consequences of adolescent chronic exposure to unpredictable stress exposure on brain and behavior.* Jl. of Neuroscience, http://dx.doi.org/10.1016/j.neuroscience.2012.09.018; Tottenham, N, Galvan, A. (2016).

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106. The very act of placing a juvenile in isolation – the utter helplessness of it – is enormously stressful. This surge of cortisol – of fear, anxiety, and agitation – will be especially severe in juveniles.

107. The brain research has yielded very clear and consistent results: As noted in an amicus brief to the United States Supreme Court: "each key characteristic of solitary confinement – lack of physical activity, meaningful interaction with other people and the natural world, visual stimulation and touch – is by itself sufficient to change the brain and to change it dramatically."[8] As brain researchers have noted, especially in juveniles, factors like stress and depression can literally shrivel areas of the brain, including the hippocampus, the region of the brain involved in memory, spatial orientation, and the control of emotions - a burden that may well become permanent.

SOLITARY CONFINEMENT IN THE NORTH UNIT

108. Based on his review of the documents provided to him by Plaintiffs' counsel, Dr. Grassian offered the following observations that the solitary confinement experienced by juveniles at Woodside, and in particular the conditions experienced by G.W., was in no way less harsh than the solitary confinement of adults:

Physical Setting

109. Cell - Solitary confinement cells in adult prisons are small, generally about 90-100 square feet in size. The North Unit cells at Woodside are approximately the same. In adult prisons, solitary confinement cells typically contain either a metal bed fixed to the floor or a concrete slab on which a mattress is placed and a stainless-steel sink and toilet combination. This is the case in three of the four North Unit cells at Woodside; the fourth is a "dry cell" lacking a toilet, sink, or any source of fresh water. Sometimes in adult solitary cells there is also a concrete or hard plastic stool and a small steel shelf or table fixed to the wall. This is apparently lacking in the North Unit cells.

110. Adult prison cells have various types of locking doors, and they also sometimes vary in the amount of visual stimulation allowed. These include barred doors, barred doors with a plexiglass wall bolted onto it, sliding steel or hinged steel doors. Hinged steel doors tend to be the harshest, allowing very little ventilation and making conversation through the door very difficult. The videos I was shown in this case indicate that the North Unit doors were hinged doors.

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Stress and the adolescent brain; Amygdala-prefrontal cortex circuitry and ventral striatum as developmental targets. Neuroscience and Behavioral Reviews, 70, 217-227.

[8] Amicus Brief to U.S. Supreme Court of Medical and Other Scientific and Health-Related Professionals filed 12/23/16 in *Ziglar v. Abbassi et.al.* and companion cases.

111. In the adult prison setting, there is usually a window facing the outside world, allowing some amount of visual stimulation. Harsher settings either have no window to the outside or the window is glazed or painted over in such a way as to not allow the occupant to see through the window. The videos I was provided seem to indicate that the North Unit cells have windows that are glazed in such a fashion as to render them translucent but not transparent.

112. In the adult solitary confinement setting, food is generally delivered through a cuff port, and the occupant eats alone, either sitting on his bed or, if available, on a stool with a little table affixed to the wall. The cells in the North Unit appear to lack such a stool and table for eating.

113. In adult solitary, "recreation" or "exercise" is generally an hour a day, several days a week (most typically, Monday-Friday) in either another cell or outdoors in either a concrete enclosure or in a long narrow chain link "dog run." In the latter circumstance, sometimes other inmates will be out in adjacent dog runs. The North Unit provides no outside recreation at all, only access to a relatively small, fairly barren "day room." And the documents provided indicate that in many cases, including G.W.'s, access to the day room is only sporadic; sometimes over a week can go by with the juvenile having no opportunity at all to leave her cell.

114. In isolated confinement, there is generally very limited opportunity for any form of normal social interaction. Inmates sometimes invent or discover some limited way of communicating with other inmates on their tier – e.g., shouting, using the vent system as a kind of intercom system, etc. Telephone contact is quite limited. Social and family visits are limited and are almost always non-contact, often with a plexiglass window allowing visual contact and telephones required to speak with the visitor. Inmates often spend days, weeks, or even months with no social interaction other than curt interactions with correctional staff. It is my understanding that at the North Unit, children have no interaction with anyone at all from 8 p.m. until 9 a.m. the next morning, and that children could go days, weeks, or even months without contact with other children.

115. An adult in solitary confinement will typically be allowed to have a limited amount of reading material in her cell, including books shipped directly from the publisher. The inmate may also have some other means of distracting herself – a radio, a small tv, or an mp-3 player, etc. It is my understanding that in the North Unit no such amenities are permitted, not even books, and furthermore there was no access to TV or radio.

116. This lack of reading materials is part of an especial concern for juveniles in a detention facility. The responsibility of a juvenile detention facility is not only to provide custody and security, its mission is also centrally one of providing service to help the juvenile mature into a responsible and productive adult. Educational services are an essential part of that responsibility, and apparently

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there are virtually no educational services provided to juveniles confined in the North Unit – just papers passed under the cell door. No teacher meets with the student.

117. There are other features of confinement at the North Unit that are almost unprecedented. Many commentators have described the excessive use of force widely used at the North Unit. I certainly am not naïve enough to think that Corrections Officers in adult prisons never intentionally cause inmates pain, but such abuse is limited by the fact that it is officially prohibited. On the other hand, at Woodside "pain compliance" techniques are in fact taught and authorized. There are videos showing G.W. screaming as her arms are being hyperextended over her head. Several observers have commented that Woodside staff lack mental health training and, instead of finding ways to deescalate the situation with an emotionally troubled juvenile, they resort to force and intimidation.

118. In addition, at times G.W. was left naked for long periods of time in her cell in the North Unit, her clothes having been pulled off her by several male staff converging on her and holding her down. This is especially concerning as G.W. is reported to have been raped some months before she was forcibly stripped by several male staff and then left naked in her cell.

FACTUAL BACKGROUND
D.H.

119. After Plaintiff D.H. was placed into the custody of DCF, D.H. was detained at Woodside, was subjected to solitary confinement in the North Unit, and was sent out-of-state to Natchez Trace Youth Academy where he was physically abused on a regular basis.

120. For example, one Natchez Trace staff member threatened that he would "snap [D.H.'s] neck." Another staff member tackled him, while another kicked him "in [his] balls."

121. While detained at Natchez Trace Youth Academy, D.H. brought the inhumane conditions at that facility to the attention of Defendant Dale.

122. D.H. told Defendant Dale that Natchez Trace "was a bad place, staff hit a kid's face off the wall and his nose started to bleed."

123. D.H.'s reports of the inhumane conditions at the Natchez Trace facility were ignored by Defendant Dale.

124. In July 2017, the Office of the Juvenile Defender reported the abuse of D.H. at Natchez Trace to Defendant Longchamp.

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125. DCF did not respond to the Juvenile Defender's report of the inhumane conditions at the Natchez Trace facility and the abuse of D.H.

126. In September 2017, the Office of the Juvenile Defender reported the abuse of D.H. at Natchez Trace to Defendant D'Amico.

127. The Juvenile Defender's email reporting this abuse to Defendant D'Amico included a link to the letter sent to the CEO of Natchez Trace by the West Virginia Department of Health and Human Resources in May 2015.

128. The Juvenile Defender's report of the inhumane conditions at the Natchez Trace facility and the abuse of D.H. was ignored apparently by Defendant D'Amico.

129. In December 2017, while engaging in disruptive and annoying behavior at Woodside, Defendant Dubuc sent an email notifying staff that "after discussion at the Clinical Team it was decided that DH would benefit from increased support and lower stimulation" in one of the North Unit's isolation cells.

130. The decision to commit D.H. to solitary confinement in one of Woodside's isolation cells violated North Unit's procedure requiring Woodside detainees to demonstrate actual harm or imminent risk of harm to self or others before they could be isolated in the North Unit.

131. When asked about the decision to send D.H. into solitary confinement, Defendants Simons and Steward gave contradictory explanations, neither of which were based on North Unit's policy that only those who demonstrated actual harm or imminent risk of harm to self or others could be placed in a North Unit isolation cell.

FACTUAL BACKGROUND
R.H.

132. Between April 2010 and December 2018, the Vermont Department for Families and Children (DCF) had custody of R.H. While he was in the custody of DCF, R.H. experienced at least forty different placement transitions, ending with his detention at DCF's Woodside Juvenile Detention Center.

133. Numerous evaluations confirm that R.H. had suffered from repeated physical, mental, and sexual abuse as a child and, as a result of his history of trauma and abuse, he suffered from a number of psychiatric conditions, including post-traumatic stress syndrome, that contributed to his challenging behaviors and internal emotional distress.

134. Between March 2018 and December 2018, R.H. was detained at DCF's Woodside Juvenile Detention Center.

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135. Between March 2018 and December 2018, R.H. spent at least 67 days in solitary confinement in Woodside's North Unit.

136. While R.H. was being held in solitary confinement in Woodside's North Unit, Woodside staff turned off the water to R.H.'s locked cell, and he was unable to flush his toilet or get a drink of water.

137. At times, R.H. was not provided with a mattress or books to read.

138. In April 2018, Defendant Simons and Defendant Steward decided to take everything out of R.H.'s isolation cell, including his mattress, blanket, and reading material, and told R.H. he could "earn it back."

139. On April 17, 2018, Woodside staff restrained R.H. in an effort to effectuate the plan. When R.H. resisted, Woodside staff, led by Defendant Dubuc, entered R.H.'s isolation cell equipped with a riot shield, restrained him face down on his bed, and cut off R.H.'s clothing. R.H. spent the remainder of the night dressed only in his shorts.

140. Following the incident, R.H. reported that he experienced the forcible removal of his clothing as "like a sexual assault," something that he had, in fact, experienced as a child.

141. While held in solitary confinement in his North Unit seclusion cell, R.H. was deprived of educational services required by his Individualized Education Plan.

142. Defendant Steward approved the orders sending R.H. into solitary confinement.

143. Between March 2018 and December 2018, R.H. was physically restrained about ten times during which Woodside staff, including Defendants Hatin, Weiner, Martinez, and Rochon, employed the pain compliance techniques developed by Defendant Simons.

144. Defendant Steward signed the orders authorizing the physical restraint of R.H.

145. Several weeks later, Defendant Steward watched Woodside staff members hurting R.H. and did not intervene or take other steps to protect R.H.

146. Instead, Defendant Steward threatened R.H., telling him that Woodside staff would take away his clothes again if he did not comply with her plan.

147. In addition to being abused at Woodside, R.H. was placed at several out-of-state juvenile detention centers, including Natchez Trace Youth Academy in Tennessee.

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148. While detained at Natchez Trace Youth Academy, R.H. was physically abused by staff members employed by that facility on a regular basis.

149. R.H.'s complaints to Defendant Amelia Harriman regarding this abuse were ignored and never seriously investigated.

FACTUAL BACKGROUND
T.W.

150. In 2018, Plaintiff T.W. was detained at the Woodside Juvenile Rehabilitation Center ("Woodside") in Essex, Vermont.

151. While T.W. was being detained at Woodside, Plaintiff was repeatedly and unlawfully placed in a seclusion cell in the so-called "North Unit" and repeatedly and unlawfully subjected to painful physical restraints.

152. The unlawful isolation of T.W. in the North Unit seclusion cell and painful physical restraints is detailed in Woodside Orders for Restraint/Seclusion dated February 11, 2018; February 13, 2018; February 27, 2018; March 5, 2018; March 7, 2018; April 8, 2018; May 4, 2018; May 6, 2018; May 24, 2018; and May 25, 2018.

153. According to these incident reports, Defendants Simons and Steward issued these unlawful orders.

154. According to these incident reports, Defendants Bunnell, Cathcart, and Dubuc requested and/or received and carried out the orders to unlawfully place T.W. in a North Unit isolation cell or physically restrain her.

155. On May 29, 2018, the Office of the Juvenile Defender filed a Motion for a Protective Order requesting a court order requiring Defendant Schatz and his agents working at Woodside to stop using dangerous restraint techniques designed to induce pain.

156. RSLIU conducted an investigation into the use of the dangerous restraint techniques used on T.W. and her placement in the North Unit's isolation cells alleged in the Motion for a Protective Order.

157. RSLIU's investigative report concluded that Woodside's (a) use of a restraint modality that uses pain compliance that can result in hyperextended joints on Plaintiff; and (b) use of the North Unit's isolation cells to seclude Plaintiff both violated Regulations 201 (right to humane treatment and right to be free from excessive use of restraint and isolation); 648 (prohibition of pain inducement techniques and hyperextension of joints); 650 (prohibition of restraint modality that is not approved by licensing agency); 651 (restraint shall only be used as last

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resort); and 660 (children in seclusion must be provided with uninterrupted supervision by qualified staff).

158. RSLIU's report concluded that the "Governing Authority must provide RSLI a plan to address the identified areas of Non-Compliance and areas of Compliance, but with Reservations, with the intent to come into full compliance by November 16, 2018."

FACTUAL BACKGROUND
G.W.

159. G.W. was detained at Woodside and subjected to painful physical restraints and solitary confinement in 2016 and 2019.

160. In 2016, G.W. was detained at Woodside for about five weeks in May and June and for about three months between September and December.

161. Between September and December 2016, G.W. was detained in a North Unit isolation cell where she was physically restrained at least 31 times.

162. On occasion, G.W. had no clothes and was only provided with a blanket. At times, she was left naked in her isolation cell without clothes or a blanket.

163. In October 2016, the Office of the Juvenile Defender sent Defendant Dale an email complaining about the treatment of G.W. at Woodside, explaining that G.W. "seems to be getting worse at Woodside and on ISU, not better. [G.W.] appears to be more depressed every time I see her, and she has no hope that things will improve. Without hope, what incentive to (sic) [G.W.] have to do anything? Furthermore, there seem (sic) to be some significant mental health needs that remain unmet."

164. Defendant Dale forwarded the Juvenile Defender's email to Defendants Simons and Steward.

165. In May 2019, after stealing a car and crashing it during a police chase, G.W. was again detained at Woodside.

166. Before her release in July 2019, G.W. was subjected to solitary confinement in a North Unit isolation cell.

167. A series of videos depict the conditions of her nightmarish confinement in the North Unit.

168. One video captures Woodside staff rushing into her cell and pushing her against the wall with a large riot shield.

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169. Another shows her naked and screaming as Woodside staff members drag her across the floor.

170. A federal court described what it saw on a third video as a "horrific incident" involving Woodside staff members doing nothing as G.W. sits in her isolation cell, naked and covered in feces, as she inserts a wire into her arm.

FACTUAL BACKGROUND
T.F.

171. Plaintiff T.F. entered DCF custody when she was eight years old; by 2017, she had endured thirty-seven placement transitions.

172. Between the ages of three and seven, T.F. had been sexually abused by her father, had been subjected to physical abuse, and had witnessed physical abuse of other family members.

173. Between 2015 and 2018, T.F. was detained at Woodside on a number of separate occasions during which she was subjected to unnecessary and painful physical restraints and solitary confinement in one of the North Unit's isolation cells.

174. During one of her stays at Woodside, T.F. was apparently held in solitary confinement in a North Unit isolation cell for three to four months.

175. On June 27, 2018, T.F. was physically restrained by Defendants Bunnell and Piette, and dragged across the floor by her feet to her cell with Bunnell still on top of her.

176. As a result of this assault, T.F. suffered friction burns on her body.

177. A video recording of this incident indicates that Defendant Bunnell appeared angry, agitated, and aggressive.

178. On July 5, 2018, T.F.'s attorney from the Office of the Juvenile Defender filed a Motion for an Emergency Protective Order.

179. Subsequently, DCF's RLSIU investigated the allegations set forth in the Motion for an Emergency Protective Order.

180. Following the investigation, RLSIU concluded that the conduct of Woodside staff on June 27, 2018 toward T.F. was in violation of Regulation 201 (children in a residential treatment program have a right to "be free from harm by caregivers or others, and from unnecessary or excessive use of restraint and seclusion/isolation); Regulation 648 (Residential Treatment Programs are prohibited from employing "[r]estraints that impede a child/youth's ability to breathe or communicate," or using "[p]ain inducement to obtain compliance,"

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and "[h]yperextension of joints;" and Regulation 651 ("Restraint shall be used only to ensure immediate safety of the child/youth or others when no less restrictive intervention has been, or is likely to be, effective in averting danger. Restraint shall only be used as a last resort").

FACTUAL BACKGROUND
B.C.

181. Plaintiff B.C. has an extensive history of trauma and neglect. B.C.'s mother abandoned her as a toddler, and she was raised by one of her father's relatives and his wife.

182. As a child, B.C. was sexually abused.

183. B.C. entered DCF custody as an unmanageable youth after she tried to run away while she was being transported to an alternative school in Bennington, Vermont.

184. After a court adjudicated her guilt in two minor delinquent offenses (disorderly conduct and retail theft), B.C. was sent to Woodside.

185. While detained at Woodside, B.C. was repeatedly subjected to improper physical restraints and solitary confinement.

186. For example, on August 25, 2018, Defendant Hatin and two other male Woodside staff members entered B.C.'s North Unit isolation cell and, with the assistance of Defendant Ruggles, pinned her to the floor and forcibly removed her clothing, leaving her buttocks and vulva exposed.

187. Before cutting her clothes off, Defendant Ruggles told B.C. that if she surrendered her clothes, she would be provided a safety smock.

188. Throughout the incident, B.C. cried out "Don't touch me."

189. As the restraint ended, B.C. was silent in the fetal position.

190. Afterwards, B.C. was not provided with bedding or adequate clothing for her lower body for 48 hours.

191. After reviewing a video of the incident, Paul Capcara, R.N., reported the abuse of B.C. with DCF's RLSIU.

192. Mr. Capcara was particularly "concerned that [B.C.] was left naked from the waist down as a result of the restraint. There were further concerns that given the youth's sexual abuse history, the restraint was authorized to be done by a group of male staff members."

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193. After completing their investigation, RLSIU investigators criticized Defendant Ruggles attempt to use the provision of a safety smock as a bargaining chip: "The language [recorded on the video] describes a power struggle between [B.C.] and the staff members at Woodside, which is advised against in her safety plan and not aligned with DBT practice. The safety smock should be seen as a basic need for [B.C.'s] safety and privacy, not a bargaining chip for compliance."

194. RLSIU investigators then concluded that Woodside was found in violation of Regulation 201 (a resident has the right to be free from excessive use of restraint and seclusion); Regulation 601 (a residential treatment program shall provide adequate supervision to the treatment and developmental needs of children/youth); Regulation 648 (a residential treatment facility shall prohibit all cruel, severe, unusual or unnecessary practices); Regulation 650 (restraints may not be employed without prior approval of the Licensing Authority); Regulation 651 (limitations on the use of restraints); Regulation 660 (residents in seclusion cells shall be subject to uninterrupted monitoring); and Regulation 718 ("No child/youth's room shall be stripped of its contents and used for seclusion").

FACTUAL BACKGROUND
A.L.

195. In 2018, A.L. was in DCF custody and detained at Woodside.

196. A.L., who turned 13 on November 23, 2017, was the youngest Woodside detainee.

197. In 2018, A.L was repeatedly subjected to painful restraints by Woodside staff members.

198. On August 13, 2018, for example, A.L. suffered rug burns from being dragged on the floor during one of these restraints.

199. In addition, A.L. spent extended periods of time in solitary confinement, locked away in one of the North Unit seclusion cells.

200. Defendant Steward approved staff requests to send A.L. into solitary confinement in Woodside's North Unit.

201. In April 2018, Defendant Dubuc ordered A.L. into the North Unit, later claiming that A.L. "voluntarily" agreed to Dubuc's unilateral decision to place A.L. into solitary confinement.

202. In response to grievances filed on behalf of A.L., Defendant Simons justified Woodside's use of physical restraints and solitary confinement as a legitimate method to control A.L. behavior.

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203. The physical abuse of A.L. continued after DCF sent its detainees to the Middlesex Adolescent Program (MAP) in 2020.

204. On April 15, 2020, a video recording captured Defendant Brice shoving A.L. "with significant force using two hands on [A.L.'s] neck. [A.L.] appears to be pushed into the wall from the force of the shove to the neck."

205. The previous day, Brice notified Defendant Simons that he "was feeling anxiety and having difficulty sleeping because of the working conditions at MAP."

206. Simons denied Brice's request to be relieved of duty and was required to complete his shift.

207. The incident was subsequently investigated by DCF's Residential Treatment Program Regulatory Intervention Unit (RTPRI) whose investigators concluded that MAP violated Regulation 122 (written report of any incident that potentially affects safety, physical or emotional welfare of child/youth within 24 hours); Regulation 201 (prohibition on the use of excessive force); Regulation 401 (program shall not hire or continue to employ persons whose behavior may endanger children/youth); Regulation 403 (facility must maintain sufficient number of staff); Regulation 416 (staff shall receive training in the prevention and use of restraint); Regulation 423 (program shall establish procedures for adequate communication and support among staff to provide services to children/youth); Regulation 648 (program shall prohibit the use of cruel, severe or unnecessary practices); Regulation 650 (program shall not use any form of restraint without prior approval); and Regulation 651 (restraint may only be used to ensure the immediate safety of the child/youth).

208. RTPRI investigators interviewed Todd Fountain of JKM Training.

209. In December 2019, DCF notified the federal court that it had implemented a new policy requiring Woodside staff to employ de-escalation techniques included in the nationally-recognized Safe Crisis Management system.

210. JKM Training was hired by DCF to train Woodside staff in the techniques included in the Safe Crisis Management System.

211. Fountain told RTPRI investigators that Woodside staff members were told by Defendant Simons "to go back to the old techniques if [the Safe Crisis Management techniques were not] working."

212. Fountain suggested that Defendant Simons might be "sabotaging its implementation" in an effort to prove that "what they were doing [before the federal court intervened] was good."

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213. According to Fountain, the conduct of Woodside/MAP staff exhibited the belief that "intimidation is a behavior-management strategy."

214. On June 29, 2020, A.L. was again assaulted by Woodside/MAP staff, led by Defendant Hamlin.

215. During the assault, A.L. was knocked to the floor, A.L.'s arms were twisted and pulled behind his back, and A.L.'s legs were crossed while his feet were moved up against his buttocks.

216. In its August 2019 order, the federal court specifically banned the further use of this painful and unnecessary restraint technique ("The focus of forcing youths into the final position – arms raised behind the back, feet crossed and pushed into the buttocks – results in prolonged struggles on the floor").

217. On July 7, 2020, Disability Rights Vermont reported the two assaults to the federal court.

218. According to Disability Rights Vermont, a "review of the video of the June 29, 2020 incident regarding two youths confirms that the same, or even more dangerous, pain-inflicting maneuvers that existed prior to this litigation were used again, despite this Court's Preliminary Injunction Order and Order approving the Settlement Agreement."

219. In August 2020, newly-appointed DCF Commissioner Sean Brown told Vermont State legislators that when Woodside staff members assaulted A.L., they "ultimately reverted to some techniques that aren't supported by the new model that we're using in the facility."

220. According to Commissioner Brown, Woodside staff restrained A.L. "in a way that's inappropriate in a prone position."

CAUSES OF ACTION

COUNT ONE
Conspiracy to violate the Eighth Amendment's ban on cruel and unusual punishment

221. Plaintiffs repeat and incorporate herein paragraphs 1 through 220.

222. At all times material hereto, Defendants were acting under color of state law.

223. The Eighth Amendment guarantees Plaintiffs' right to be free from cruel and unusual punishment.

224. Defendants were vested with control over the custody and care of Plaintiffs.

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225. Defendants owed a duty of care to Plaintiffs to ensure that their custody was reasonably safe and to detect and correct problems that could cause injury to Plaintiffs.

226. Between 2017 and 2020, while Plaintiffs were detained at Woodside and the Middlesex Adolescent Program, Defendants conspired to unlawfully isolate Plaintiffs in seclusion cells in Woodside North Unit, to physically restrain them in violation of Plaintiffs' constitutional rights, and engaged in wanton and willful conduct that violated Plaintiffs' right to be free from cruel and unusual punishment as guaranteed by the Eighth Amendment to the United States Constitution in violation of 42 U.S.C. §1985.

COUNT TWO
Conspiracy to violate the Eighth Amendment and Fourteenth Amendment' s ban on the use of excessive force

227. Plaintiffs repeat and incorporate herein paragraphs 1 through 226.

228. At all times material hereto, Defendants were acting under color of state law.

229. Between 2017 and 2020, while Plaintiffs were detained at Woodside and the Middlesex Adolescent Program, Defendants conspired to unlawfully isolate Plaintiffs in seclusion cells in Woodside North Unit, to physically restrain them in violation of Plaintiffs' constitutional rights, and engaged in wanton and willful conduct that violated Plaintiffs' right to be free from excessive force as guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution in violation of 42 U.S.C. §1985.

COUNT THREE
Conspiracy to violate Plaintiffs' right to due process of law as guaranteed by the Fourteenth Amendment

230. Plaintiffs repeat and incorporate herein paragraphs 1 through 229.

231. At all times material hereto, Defendants were acting under color of state law.

232. The Fourteenth Amendment guarantees that no person shall be deprived of life, liberty, or property, without due process of law.

233. Defendants were vested with control over the custody and care of Plaintiffs.

234. Defendants owed Plaintiffs a duty of care to ensure their custody was reasonably safe and to detect and correct problems that could cause injury to Plaintiffs.

235. Between 2017 and 2020, while Plaintiffs were detained at Woodside and the Middlesex Adolescent Program, Defendants conspired to unlawfully isolate

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Plaintiffs in seclusion cells in Woodside North Unit, to physically restrain them in violation of Plaintiffs' constitutional rights, and engaged in wanton and willful conduct that violated Plaintiffs' right to substantive and procedural due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. §1985.

COUNT FOUR
Defendants violated the Eighth Amendment's ban on cruel and unusual punishment

236. Plaintiffs repeat and incorporate herein paragraphs 1 through 235.

237. At all times material hereto, Defendants were acting under color of state law.

238. The Eight Amendment guarantees Plaintiffs' right to be free from cruel and unusual punishment.

239. Defendants were vested with control over the custody and care of Plaintiffs.

240. Defendants owed Plaintiffs a duty of care to ensure their custody was reasonably safe and to detect and correct problems that could cause injury to Plaintiffs.

241. Between 2017 and 2020, while Plaintiffs were detained at Woodside and the Middlesex Adolescent Program, Defendants unlawfully isolated Plaintiffs in seclusion cells in Woodside's North Unit, physically restrained them in violation of Plaintiffs' constitutional rights, and engaged in wanton and willful conduct that violated Plaintiffs' right to be free from cruel and unusual punishment as guaranteed by the Eighth Amendment to the United States Constitution in violation of 42 U.S.C. §1983.

COUNT FIVE
Defendants violated the Eighth Amendment and Fourteenth Amendment's ban on the use of excessive force

242. Plaintiffs repeat and incorporate herein paragraphs 1 through 241.

243. At all times material hereto, Defendants were acting under color of state law.

244. The Eighth Amendment and Fourteenth Amendments guarantees Plaintiffs' right to bodily integrity and to be secure in their person and free from excessive force.

245. The Defendants' actions and use of force, as described herein, were also malicious and/or involved reckless, callous, and deliberate indifference to Plaintiffs' federally protected rights.

246. The use of force by Defendants shocks the conscience.

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95 ST. PAUL STREET
P. O. BOX 902
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247. The Defendants used such force as was objectively unreasonable, excessive, and conscience shocking physical force.

248. None of the Defendants took reasonable steps to protect Plaintiffs from the objectively unreasonable and conscience shocking excessive force of other Defendants despite being in a position to do so.

249. The individual Defendants acted in concert and joint action with each other.

250. The aforementioned acts of Defendants were perpetrated against Plaintiffs without legal justification. The acts were excessive, done with actual malice towards Plaintiffs, and with willful and wanton indifference to, and deliberate disregard for human life and the constitutional rights of Plaintiffs.

251. While Plaintiffs were detained at Woodside and the Middlesex Adolescent Program, Defendants unlawfully isolated Plaintiffs in seclusion cells in Woodside North Unit, physically restrained them in violation of Plaintiffs' constitutional rights, and engaged in wanton and willful conduct that violated Plaintiffs' right to be free from excessive force as guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution in violation of 42 U.S.C. §1983.

COUNT SIX
Defendants deprived Plaintiff of their right to due process of law as guaranteed by the Fourteenth Amendment

252. Plaintiffs repeat and incorporate herein paragraphs 1 through 251.

253. At all times material hereto, Defendants were acting under color of state law.

254. The Fourteenth Amendment guarantees that no person shall be deprived of life, liberty, or property, without due process of law.

255. Defendants were vested with control over the custody and care of Plaintiffs.

256. Defendants owed Plaintiffs a duty of care to ensure their custody was reasonably safe and to detect and correct problems that could cause injury to Plaintiffs.

257. Defendants violated Plaintiffs' Fourteenth Amendment rights when they confined, restrained, treated, and punished Plaintiffs in the aforementioned manner.

258. Defendants deprived Plaintiffs of their protected liberty interest by punishing, restraining, and confining Plaintiffs in the manner aforementioned.

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259. The aforementioned acts of Defendants were perpetrated against Plaintiffs without legal justification. The acts were excessive, done with actual malice towards Plaintiffs, and with willful and wanton indifference to, and deliberate disregard for human life and the constitutional rights of Plaintiffs.

260. Between 2017 and 2020, while Plaintiffs were detained at Woodside and the Middlesex Adolescent Program, Defendants unlawfully isolated Plaintiffs in seclusion cells in Woodside North Unit, physically restrained them in violation of Plaintiffs' constitutional rights, and engaged in wanton and willful conduct that violated Plaintiffs' right to substantive and procedural due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. §1983.

COUNT SEVEN
Defendants were deliberately indifferent to the violations of Plaintiffs' rights perpetrated by staff members at the Natchez Trace Youth Academy

261. Plaintiffs repeat and incorporate herein paragraphs 1 through 260.

262. At all times material hereto, Defendants Schatz, Dale, D'Amico, Longchamp, Harriman, and Wolcott were acting under color of state law.

263. The Fourteenth Amendment guarantees that no person shall be deprived of life, liberty, or property, without due process of law.

264. Defendants Schatz, Dale, D'Amico, Longchamp, Harriman, and Wolcott were vested with control over the custody and care of Plaintiffs.

265. Defendants Schatz, Dale, D'Amico, Longchamp, Harriman, and Wolcott owed Plaintiffs a duty of care to ensure their custody was reasonably safe and to detect and correct problems that could cause injury to Plaintiffs.

266. Defendants Schatz, Dale, D'Amico, Longchamp, Harriman, and Wolcott ignored complaints about the inhumane conditions at the Natchez Trace Youth Academy registered by Plaintiffs R.H. and D.H., demonstrating deliberate indifference to the repeated violations of R.H.'s and D.H's civil and constitutional rights which directly and negatively impacted their physical safety and emotional well-being in violation of their (a) right to be free from cruel and unusual punishment as guaranteed by the Eighth Amendment to the United States Constitution; (b) right to be free from excessive force as guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution; and (c) right to substantive and procedural due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. §1983.

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COUNT EIGHT
Conspiracy to violate the First Amendment's Right to Petition the Government for a Redress of Grievances

267. Plaintiffs repeat and incorporate herein paragraphs 1 through 266.

268. At all times material hereto, Defendants were acting under color of state law.

269. The First Amendment guarantees Plaintiffs' right to petition the government for a redress of grievances.

270. Defendants were vested with control over the custody and care of Plaintiffs.

271. In 2018, while Plaintiffs R.H. and T.F. were detained at Woodside, Defendants conspired to retaliate against R.H. and T.F. after they registered complaints about the abuse they suffered at Woodside in violation of Plaintiffs' constitutional rights, and engaged in wanton and willful conduct that violated Plaintiffs' First Amendment rights in violation of 42 U.S.C. §1985.

COUNT NINE
Defendants violated R.H.'s and T.F.'s First Amendment's Right to Petition the Government for a Redress of Grievances

272. Plaintiffs repeat and incorporate herein paragraphs 1 through 271.

273. At all times material hereto, Defendants were acting under color of state law.

274. The First Amendment guarantees Plaintiffs' right to petition the government for a redress of grievances.

275. Defendants were vested with control over the custody and care of Plaintiffs.

276. In 2018, while Plaintiffs R.H. and T.F. were detained at Woodside, Defendants retaliated against R.H. and T.F. after they registered complaints about the abuse they suffered at Woodside in violation of Plaintiffs' constitutional rights, and engaged in wanton and willful conduct that violated Plaintiffs' First Amendment rights in violation of 42 U.S.C. §1983.

DAMAGES – COUNTS ONE THROUGH NINE

277. Plaintiffs repeat and incorporate herein paragraphs 1 through 276.

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278. As a result of Defendants' outrageous, illegal, unconstitutional, and unlawful conduct, Plaintiffs suffered serious physical and psychological injuries, both temporary and permanent, and are entitled to compensatory damages resulting from those injuries.

279. Based on Defendants' willful and wanton disregard for, and deliberate indifference to, Plaintiff's constitutional rights, Plaintiffs are entitled to exemplary damages.

280. In addition, Defendants are liable to Plaintiffs for those damages pursuant to 42 U.S.C. §1983 and §1985 and for their attorney's fees and litigation expenses pursuant to 42 U.S.C. §1988.

PENDENT STATE CLAIMS

COUNT TEN
Assault and Battery

281. Plaintiffs repeat and incorporate herein paragraphs 1 through 281

282. While Plaintiffs were detained at Woodside and the Middlesex Adolescent Program between 2016 and 2020, Defendants repeatedly placed them in isolation cells in the North Unit and physically assaulted them.

Damages for Assault and Battery

283. As a result of Defendants' outrageous, illegal, unconstitutional, and unlawful conduct, Plaintiffs suffered serious physical and psychological injuries, both temporary and permanent, and are entitled to compensatory damages resulting from those injuries.

284. Based on Defendants' intentional misconduct, Plaintiffs are also entitled to exemplary damages.

COUNT ELEVEN
Intentional Infliction of Emotional Harm

285. Plaintiffs repeat and incorporate herein paragraphs 1 through 285.

286. Defendants were vested with control over the custody and care of Plaintiffs.

287. Defendants' confinement, restraint, treatment, and punishment of Plaintiffs was so outrageous and extreme as to go beyond all possible bounds of decency.

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288. Defendants intended to cause emotional distress to Plaintiffs or acted in reckless disregard of the probability of causing emotional distress to Plaintiffs.

289. Plaintiffs have suffered and continue to suffer emotional distress.

290. The aforementioned acts of Defendants were perpetrated against Plaintiffs without legal justification. The acts were excessive, done with actual malice towards Plaintiffs, and with willful and wanton indifference to, and deliberate disregard for human life and the constitutional rights of Plaintiffs.

291. By repeatedly placing Plaintiffs in isolation cells in Woodside North Unit and by physically assaulting them, Defendants' outrageous and inexcusable conduct caused Plaintiffs to suffer from extreme emotional distress.

DAMAGES
Intentional Infliction of Emotional Harm

292. As a result of Defendants' intentional infliction of emotion harm, Plaintiffs are entitled to both compensatory and exemplary damages.

COUNT TWELVE
Defendants' grossly negligent and reckless supervision of persons in their custody and control

293. Plaintiffs repeat and incorporate herein paragraphs 1 through 293.

294. By statute, Defendants were vested with control, custody, and supervision of Plaintiffs and had a duty to protect Plaintiffs from foreseeable harm.

295. Defendants owed Plaintiffs a duty of care to ensure their custody was reasonably safe and to detect and correct problems that could cause injury to Plaintiffs

296. As a result of their grossly negligent and reckless conduct, Defendants breached their duty of care to Plaintiffs.

DAMAGES – Grossly negligent and reckless supervision

297. As a result of Defendants' breach of their duty of care to Plaintiffs, Plaintiffs suffered physical and emotional harm, both temporary and permanent, for which they are entitled damages and other compensation in an amount to be determined by the jury.

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WHEREFORE, Plaintiffs request that this Court:

1. enter judgment in their favor on all counts of the Complaint;

2. award Plaintiffs compensatory damages in an amount to be determined by the Court;

2. award medical expenses related to the treatment of Plaintiffs' injuries, which are claimed as special damages, Fed.R.Civ.Pro. 9(g);

3. award exemplary damages for Defendants' outrageous and illegal conduct;

5. award Plaintiffs attorney's fees and expenses pursuant to 42 U.S.C. § 1988;

6. grant such other and further relief as this Court deems proper.

Plaintiffs hereby demand a trial by jury.

DATED at Burlington, Vermont this 13th day of December, 2021.

Respectfully submitted,

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Counsel for Plaintiffs

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JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Cathy Welch, Administrator Of The Estate of G.W., et al.

(b) County of Residence of First Listed Plaintiff Orange County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Jarvis, McArthur & Williams
P.O. Box 902, Burlington, VT 05402; (802) 658-9411

DEFENDANTS

Kenneth Schatz, et al.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

Vermont Attorney General's Office
109 State St., Montpelier, VT 05609; (802) 828-3171

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☒ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

INTELLECTUAL PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
42 U.S.C. §1983 and §1985

Brief description of cause:
Plaintiffs' civil rights were violated as a result of Defendants' infliction of physical and emotional harm

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*:

JUDGE _____ DOCKET NUMBER _____

DATE
Dec 13, 2021

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 01381 AMOUNT 402 APPLYING IFP _____ JUDGE _____ MAG. JUDGE 10BC

Iss Summ + LR 73.1 forms

2:21-cv-283

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

District of Vermont

Cathy Welch, Administrator Of The Estate of G.W., et al.
Plaintiff

v.

Kenneth Schatz, et al.
Defendant

Civil Action No. 2:21-cv-283

WAIVER OF THE SERVICE OF SUMMONS

To: David J. Williams and Brooks G. McArthur
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 12/15/2021, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 12/20/21

Ian P. Carleton, Esq.
Signature of the attorney or unrepresented party

Aron Steward
Printed name of party waiving service of summons

Ian P. Carleton, Esq.
Printed name

Sheehey, Furlong & Behm, P.C.
P.O. Box 66
Burlington, VT 05402
Address

icarleton@sheeheyvt.com
E-mail address

(802) 864-9891
Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Vermont

Cathy Welch, Administrator For The Estate of G.W., et al.

Plaintiff(s)

v.

Kenneth Schatz, et al.

Defendant(s)

Civil Action No. 2:21-cv-283

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Aron Steward

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

David J. Williams
Brooks G. McArthur
Jarvis, McArthur & Williams
P.O. Box 902
Burlington, VT 05402

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

JEFFREY S. EATON

CLERK OF COURT

Date: 12/13/2021

Lisa Wright

Signature of ~~Clerk or~~ Deputy Clerk

Civil Action No. 2:21-cv-283

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify)*:

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

Cathy Welch

Plaintiff(s)

v.

Case Number 2:21-cv-283

Kenneth Schatz, et al

MAGISTRATE JUDGE ASSIGNMENT FORM

Defendant(s)

NOTE: You must sign Part I *or* Part II below, and return this document to the Clerk's Office within 21 days. See the other side of this form for more information.

PART I - CONSENT

Pursuant to 28 U.S.C. § 636(c), the undersigned (party) (counsel) to the above-captioned civil case voluntarily consents to have this case assigned to the Magistrate Judge for any and all further proceedings, including trial and entry of a final judgment, with direct review by the Second Circuit Court of Appeals if an appeal is filed.

Dated: _____

_____
Signature

_____
Print Name

Party(ies) Represented: _____

PART II - OBJECTION TO ASSIGNMENT

The undersigned (party) (counsel) objects to the assignment of this matter to the Magistrate Judge and elects to have the case assigned to a District Judge.

Dated: 12/23/21

_____
Signature

Brooks G. McArthur, Esq., Attorney for Plaintiffs
Print Name

Party(ies) Represented: **Plaintiffs - Cathy Welch, Administrator for the Estate of G.W., R.H., T.W., T.F., D.H., B.C., and A.L. by next friend Norma Labounty**

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, ADMINISTRATOR OF THE ESTATE OF G.W., R.H., T.W., T.F., D.H., B.C., and A.L. by next friend Norma Labounty	)	Docket No. 2:21-cv-283

MOTION TO ASSIGN CASE TO A DISTRICT JUDGE

NOW COME, Plaintiffs in the above-entitled matter, by and through undersigned counsel, and hereby move the Honorable Court to assign the above matter to a District Judge, namely Chief Judge Honorable Geoffrey W. Crawford, on the grounds that there is a related case, *Disability Rights Vermont v. Department of Children and Families, et al., 5:19-cv-00106-gwc* over which Chief Judge Crawford presided.

DATED at Burlington, Vermont this 28th day of December, 2021.

Brooks G. McArthur, Esq.
Jarvis, McArthur & Williams

David J. Williams, Esq.
Jarvis, McArthur & Williams

Attorneys for Plaintiffs

JARVIS, McARTHUR
& WILLIAMS
ATTORNEYS AT LAW
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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, ADMINISTRATOR OF THE ESTATE OF G.W., R.H., T.W., T.F., D.H., B.C., and A.L. by next friend Norma Labounty	)	Docket No. 2:21-cv-283

CERTIFICATE OF SERVICE

I, Brooks G. McArthur, Esq., hereby certify that on this 28th day of December, 2021 filed with the Clerk of Court using the CM/ECF filing system *Plaintiffs' Objection To Magistrate Judge Assignment* and *Motion to Assign Case To A District Judge* with a copy delivered via electronic notification to the following:

Ian Carleton, Esq., Attorney For Defendant Aron Steward
icarleton@sheeheyvt.com

Currently, counsel for Plaintiffs is awaiting acceptance of service of the Summons and Complaint from potential counsel for remaining Defendants. If potential counsel for Defendants is able to accept service, a copy of Plaintiffs' Objection To Magistrate Judge Assignment and Motion to Assign Case To A District Judge will be forwarded to their counsel and Plaintiffs will file a Certificate of Service with the Court. If the Summons and Complaint need to be served on Defendants individually, Plaintiffs will also serve a copy of the Objection and Motion To Assign Case To A District Judge on each Defendant at that time.

DATED at Burlington, Vermont this 28th day of December, 2021.

Brooks G. McArthur, Esq.
Jarvis, McArthur & Williams

JARVIS, MCARTHUR
& WILLIAMS
ATTORNEYS AT LAW
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P. O. BOX 902
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UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF VERMONT

CATHY WELCH, *Administrator of the Estate of G.W.,* et al.

Plaintiffs,

v. Case No. 5:21-cv-283

KENNETH SCHATZ, *in his individual capacity,* et al.,

Defendants.

NOTICE OF CASE REASSIGNMENT

An objection to the assignment of this case to the Magistrate Judge has been received. Pursuant to Local Rule 73(d), reassignment is hereby made to Chief Judge Geoffrey W. Crawford.

Dated at Burlington, in the District of Vermont, this 28th day of December, 2021.

JEFFREY S. EATON
Clerk of Court

/s/ Lisa Wright
By Lisa Wright
Operations Specialist

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

District of Vermont

Cathy Welch, Administrator Of The Estate of G.W., et al.
Plaintiff
v.
Kenneth Schatz, et al.
Defendant

Civil Action No. 2:21-CV-283

WAIVER OF THE SERVICE OF SUMMONS

To: David J. Williams and Brooks G. McArthur
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 12/14/21, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 1/7/2022

/s/ Joshua R. Diamond
Deputy Attorney General
Signature of the attorney or unrepresented party

Cindy Wolcott
Printed name of party waiving service of summons

Printed name

David McLean, AAG; Josh Diamond AAG
Vermont Attorney General's Office
109 State St., Montpelier, VT 05609
Address

E-mail address

(802) 828-3171
Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

District of Vermont

Cathy Welch, Administrator Of The Estate of G.W., et al.
Plaintiff
v.
Kenneth Schatz, et al.
Defendant

Civil Action No. 2:21-CV-283

WAIVER OF THE SERVICE OF SUMMONS

To: David J. Williams and Brooks G. McArthur
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 12/14/21, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 1/7/2022

/s/ Joshua R. Diamond
Deputy Attorney General
Signature of the attorney or unrepresented party

Brenda Gooley
Printed name of party waiving service of summons

Printed name

David McLean, AAG; Josh Diamond AAG
Vermont Attorney General's Office
109 State St., Montpelier, VT 05609
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"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

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AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

District of Vermont

Cathy Welch, Administrator Of The Estate of G.W., et al.
Plaintiff
v.
Kenneth Schatz, et al.
Defendant

Civil Action No. 2:21-CV-283

WAIVER OF THE SERVICE OF SUMMONS

To: David J. Williams and Brooks G. McArthur
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 12/14/21, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 1/7/2022

/s/ Joshua R. Diamond
Deputy Attorney General
Signature of the attorney or unrepresented party

Jay Simons
Printed name of party waiving service of summons

Printed name
David McLean, AAG; Josh Diamond AAG
Vermont Attorney General's Office
109 State St., Montpelier, VT 05609
Address

E-mail address

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Duty to Avoid Unnecessary Expenses of Serving a Summons

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"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

District of Vermont

Cathy Welch, Administrator Of The Estate of G.W., et al.
Plaintiff
v.
Kenneth Schatz, et al.
Defendant

Civil Action No. 2:21-CV-283

WAIVER OF THE SERVICE OF SUMMONS

To: David J. Williams and Brooks G. McArthur
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 12/14/21, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 1/7/2022

/s/ Joshua R. Diamond
Deputy Attorney General
Signature of the attorney or unrepresented party

Marcus Bunnell
Printed name of party waiving service of summons

Printed name

David McLean, AAG; Josh Diamond AAG
Vermont Attorney General's Office
109 State St., Montpelier, VT 05609
Address

E-mail address

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Duty to Avoid Unnecessary Expenses of Serving a Summons

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"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

District of Vermont

Cathy Welch, Administrator Of The Estate of G.W., et al.
Plaintiff
v.
Kenneth Schatz, et al.
Defendant

Civil Action No. 2:21-CV-283

WAIVER OF THE SERVICE OF SUMMONS

To: David J. Williams and Brooks G. McArthur
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 12/14/21, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 1/7/2022

/s/ Joshua R. Diamond
Deputy Attorney General
Signature of the attorney or unrepresented party

John Dubuc
Printed name of party waiving service of summons

Printed name

David McLean, AAG; Josh Diamond AAG
Vermont Attorney General's Office
109 State St., Montpelier, VT 05609
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E-mail address

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Duty to Avoid Unnecessary Expenses of Serving a Summons

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"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

District of Vermont

Cathy Welch, Administrator Of The Estate of G.W., et al.
Plaintiff
v.
Kenneth Schatz, et al.
Defendant

Civil Action No. 2:21-CV-283

WAIVER OF THE SERVICE OF SUMMONS

To: David J. Williams and Brooks G. McArthur
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 12/14/21, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 1/7/2022

/s/ Joshua R. Diamond
Deputy Attorney General
Signature of the attorney or unrepresented party

William Cathcart
Printed name of party waiving service of summons

Printed name

David McLean, AAG; Josh Diamond AAG
Vermont Attorney General's Office
109 State St., Montpelier, VT 05609
Address

E-mail address

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Duty to Avoid Unnecessary Expenses of Serving a Summons

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"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

District of Vermont

Cathy Welch, Administrator Of The Estate of G.W., et al.
Plaintiff
v.
Kenneth Schatz, et al.
Defendant

Civil Action No. 2:21-CV-283

WAIVER OF THE SERVICE OF SUMMONS

To: David J. Williams and Brooks G. McArthur
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 12/14/21, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 1/7/2022

/s/ Joshua R. Diamond
Deputy Attorney General
Signature of the attorney or unrepresented party

Bryan Scrubb
Printed name of party waiving service of summons

Printed name

David McLean, AAG; Josh Diamond AAG
Vermont Attorney General's Office
109 State St., Montpelier, VT 05609
Address

E-mail address

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Duty to Avoid Unnecessary Expenses of Serving a Summons

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If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

District of Vermont

Cathy Welch, Administrator Of The Estate of G.W., et al.
Plaintiff

v.

Kenneth Schatz, et al.
Defendant

Civil Action No. 2:21-CV-283

WAIVER OF THE SERVICE OF SUMMONS

To: David J. Williams and Brooks G. McArthur
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

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I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 12/14/21, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 1/7/2022

/s/ Joshua R. Diamond
Deputy Attorney General
Signature of the attorney or unrepresented party

Kevin Hatin
Printed name of party waiving service of summons

Printed name

David McLean, AAG; Josh Diamond AAG
Vermont Attorney General's Office
109 State St., Montpelier, VT 05609
Address

E-mail address

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Duty to Avoid Unnecessary Expenses of Serving a Summons

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"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

District of Vermont

Cathy Welch, Administrator Of The Estate of G.W., et al.
Plaintiff

v.

Kenneth Schatz, et al.
Defendant

Civil Action No. 2:21-CV-283

WAIVER OF THE SERVICE OF SUMMONS

To: David J. Williams and Brooks G. McArthur
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 12/14/21, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 1/7/2022

/s/ Joshua R. Diamond
Deputy Attorney General
Signature of the attorney or unrepresented party

Nicholas Weiner
Printed name of party waiving service of summons

Printed name

David McLean, AAG; Josh Diamond AAG
Vermont Attorney General's Office
109 State St., Montpelier, VT 05609
Address

E-mail address

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Duty to Avoid Unnecessary Expenses of Serving a Summons

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"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

District of Vermont

Cathy Welch, Administrator Of The Estate of G.W., et al.
Plaintiff
v.
Kenneth Schatz, et al.
Defendant

Civil Action No. 2:21-CV-283

WAIVER OF THE SERVICE OF SUMMONS

To: David J. Williams and Brooks G. McArthur
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 12/14/21, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 1/7/2022

/s/ Joshua R. Diamond
Deputy Attorney General
Signature of the attorney or unrepresented party

David Martinez
Printed name of party waiving service of summons

Printed name

David McLean, AAG; Josh Diamond AAG
Vermont Attorney General's Office
109 State St., Montpelier, VT 05609
Address

E-mail address

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Duty to Avoid Unnecessary Expenses of Serving a Summons

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AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

District of Vermont

Cathy Welch, Administrator Of The Estate of G.W., et al.
Plaintiff
v.
Kenneth Schatz, et al.
Defendant

Civil Action No. 2:21-CV-283

WAIVER OF THE SERVICE OF SUMMONS

To: David J. Williams and Brooks G. McArthur
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

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Date: 1/7/2022

/s/ Joshua R. Diamond
Deputy Attorney General
Signature of the attorney or unrepresented party

Carol Ruggles
Printed name of party waiving service of summons

Printed name

David McLean, AAG; Josh Diamond AAG
Vermont Attorney General's Office
109 State St., Montpelier, VT 05609
Address

E-mail address

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Duty to Avoid Unnecessary Expenses of Serving a Summons

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AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

District of Vermont

Cathy Welch, Administrator Of The Estate of G.W., et al.
Plaintiff
v.
Kenneth Schatz, et al.
Defendant

Civil Action No. 2:21-CV-283

WAIVER OF THE SERVICE OF SUMMONS

To: David J. Williams and Brooks G. McArthur
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

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Date: 1/7/2022

/s/ Joshua R. Diamond
Deputy Attorney General
Signature of the attorney or unrepresented party

Tim Piette
Printed name of party waiving service of summons

Printed name

David McLean, AAG; Josh Diamond AAG
Vermont Attorney General's Office
109 State St., Montpelier, VT 05609
Address

E-mail address

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Duty to Avoid Unnecessary Expenses of Serving a Summons

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AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

District of Vermont

Cathy Welch, Administrator Of The Estate of G.W., et al.
Plaintiff

v.

Kenneth Schatz, et al.
Defendant

Civil Action No.

WAIVER OF THE SERVICE OF SUMMONS

To: David J. Williams and Brooks G. McArthur
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 12/14/21, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 1/7/2022

/s/ Joshua R. Diamond
Deputy Attorney General
Signature of the attorney or unrepresented party

Devin Rochon
Printed name of party waiving service of summons

Printed name
David McLean, AAG; Josh Diamond AAG
Vermont Attorney General's Office
109 State St., Montpelier, VT 05609
Address

E-mail address

(802) 828-3171
Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

District of Vermont

Cathy Welch, Administrator Of The Estate of G.W., et al.
Plaintiff
v.
Kenneth Schatz, et al.
Defendant

Civil Action No. 2:21-CV-283

WAIVER OF THE SERVICE OF SUMMONS

To: David J. Williams and Brooks G. McArthur
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 12/14/21, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 1/7/2022

/s/ Joshua R. Diamond
Deputy Attorney General
Signature of the attorney or unrepresented party

Amelia Harriman
Printed name of party waiving service of summons

Printed name
David McLean, AAG; Josh Diamond AAG
Vermont Attorney General's Office
109 State St., Montpelier, VT 05609
Address

E-mail address

(802) 828-3171
Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

District of Vermont

Cathy Welch, Administrator Of The Estate of G.W., et al.
Plaintiff

v.

Kenneth Schatz, et al.
Defendant

Civil Action No.

WAIVER OF THE SERVICE OF SUMMONS

To: David J. Williams and Brooks G. McArthur
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 12/14/21, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 1/7/2022

/s/ Joshua R. Diamond
Deputy Attorney General
Signature of the attorney or unrepresented party

Edwin Dale
Printed name of party waiving service of summons

Printed name

David McLean, AAG; Josh Diamond AAG
Vermont Attorney General's Office
109 State St., Montpelier, VT 05609
Address

E-mail address

(802) 828-3171
Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

District of Vermont

Cathy Welch, Administrator Of The Estate of G.W., et al.
Plaintiff

v.

Kenneth Schatz, et al.
Defendant

Civil Action No. 2:21-CV-283

WAIVER OF THE SERVICE OF SUMMONS

To: David J. Williams and Brooks G. McArthur
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 12/14/21, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 1/7/2022

/s/ Joshua R. Diamond
Deputy Attorney General
Signature of the attorney or unrepresented party

Melanie D'Amico
Printed name of party waiving service of summons

Printed name
David McLean, AAG; Josh Diamond AAG
Vermont Attorney General's Office
109 State St., Montpelier, VT 05609
Address

E-mail address

(802) 828-3171
Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

District of Vermont

Cathy Welch, Administrator Of The Estate of G.W., et al.
Plaintiff
v.
Kenneth Schatz, et al.
Defendant

Civil Action No. 2:21-cv-283

WAIVER OF THE SERVICE OF SUMMONS

To: David J. Williams and Brooks G. McArthur
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 12/14/21, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 1/7/2022

/s/ Joshua R. Diamond
Deputy Attorney General
Signature of the attorney or unrepresented party

Erin Longchamp
Printed name of party waiving service of summons

Printed name

David McLean, AAG; Josh Diamond AAG
Vermont Attorney General's Office
109 State St., Montpelier, VT 05609
Address

E-mail address

(802) 828-3171
Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

District of Vermont

Cathy Welch, Administrator Of The Estate of G.W., et al.
Plaintiff
v.
Kenneth Schatz, et al.
Defendant

Civil Action No. 2:21-cv-283

WAIVER OF THE SERVICE OF SUMMONS

To: David J. Williams and Brooks G. McArthur
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

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I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 12/14/21, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 1/7/2022

/s/ Joshua R. Diamond
Deputy Attorney General
Signature of the attorney or unrepresented party

Christopher Hamlin
Printed name of party waiving service of summons

Printed name
David McLean, AAG; Josh Diamond AAG
Vermont Attorney General's Office
109 State St., Montpelier, VT 05609
Address

E-mail address

(802) 828-3171
Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

District of Vermont

Cathy Welch, Administrator Of The Estate of G.W., et al.
Plaintiff
v.
Kenneth Schatz, et al.
Defendant

Civil Action No. 2:21-cv-283

WAIVER OF THE SERVICE OF SUMMONS

To: David J. Williams and Brooks G. McArthur
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 12/14/21, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 1/7/2022

/s/ Joshua R. Diamond
Deputy Attorney General
Signature of the attorney or unrepresented party

Anthony Brice
Printed name of party waiving service of summons

Printed name

David McLean, AAG; Josh Diamond AAG
Vermont Attorney General's Office
109 State St., Montpelier, VT 05609
Address

E-mail address

(802) 828-3171
Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, ADMINISTRATOR OF THE ESTATE OF G.W., R.H., T.W., T.F., D.H., B.C., and A.L. by next friend Norma Labounty	)	Docket No. 5:21-cv-283
v.	)	
KENNETH SCHATZ, et al.	)	

CERTIFICATE OF SERVICE

I, Brooks G. McArthur, hereby certify that on this 10th day of January, 2022 forwarded a copy of *Notice of Case Reassignment* and *Court's Order dated January 4, 2022* to the following via electronic mail:

Ian Carleton, Esq.
icarleton@sheeheyvt.com

DATED at Burlington, Vermont this 10th day of January, 2022.

Brooks G. McArthur, Esq.
Jarvis, McArthur & Williams

JARVIS, McARTHUR
& WILLIAMS
ATTORNEYS AT LAW
SUITE 2E – PARK PLAZA
95 ST. PAUL STREET
P. O. BOX 902
BURLINGTON, VT
05402-0902
802-658-9411

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, ADMINISTRATOR OF THE ESTATE OF G.W., R.H., T.W., T.F., D.H., B.C., and A.L. by next friend Norma Labounty	)	Docket No. 5:21-cv-283
v.	)	
KENNETH SCHATZ, et al.	)	

CERTIFICATE OF SERVICE

I, Brooks G. McArthur, hereby certify that on this 10th day of January, 2022 forwarded a copy of *Plaintiff's Objection To Assignment*, *Motion To Assign Case To A District Judge*, *Notice of Case Reassignment*, and *Court's Order dated January 4, 2022* to the following via electronic mail:

Deputy Attorney General Joshua Diamond
Joshua.Diamond@vermont.gov

DATED at Burlington, Vermont this 10th day of January, 2022.

Brooks G. McArthur, Esq.
Jarvis, McArthur & Williams

JARVIS, McARTHUR
& WILLIAMS
ATTORNEYS AT LAW
SUITE 2E – PARK PLAZA
95 ST. PAUL STREET
P. O. BOX 902
BURLINGTON, VT
05402-0902
802-658-9411

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

CATHY WELCH, ADMINISTRATOR OF THE ESTATE OF G.W., R.H., T.W., T.F., D.H., B.C., and A.L., by Next Friend, Norma Labounty,

Plaintiffs

v. **Docket No. 5:21-cv-00283**

KENNETH SCHATZ, KAREN SHEA, CINDY WOLCOTT, BRENDA GOOLEY, JAY SIMONS, ARON STEWARD, MARCUS BUNNELL, JOHN DUBUC, WILLIAM CATHCART, BRYAN SCRUBB, KEVIN HATIN, NICHOLAS WEINER, DAVID MARTINEZ, CAROL RUGGLES, TIM PIETTE, DEVIN ROCHON, AMELIA HARRIMAN, EDWIN DALE, MELANIE D'AMICO, ERIN LONGCHAMP, CHRISTOPHER HAMLIN, AND ANTHONY BRICE, all in their individual capacities,

Defendants

NOTICE OF APPEARANCE

Theriault & Joslin, P.C. hereby enters its appearance on behalf of defendant Jay Simons in the above-entitled matter.

Dated at Montpelier, Vermont this 7th day of February, 2022.

Wesley M. Lawrence
THERIAULT & JOSLIN, P.C.
141 Main Street, Suite 4
Montpelier, VT 05602
Telephone: (802) 223-2381
wmlawrence@tjoslin.com

Attorneys for Defendant, Jay Simons

cc: Brooks G. McArthur, Esq./David J. Williams, Esq.
Andrew C. Boxer, Esq.
Lisa M. Werner, Esq./Susan J. Flynn, Esq.
Bonnie J. Badgewick, Esq.
Michael J. Leddy, Esq./Joseph A. Farnham, Esq.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

CATHY WELCH, ADMINISTRATOR OF THE ESTATE OF G.W., R.H., T.W., T.F., D.H., B.C., and A.L., by Next Friend, Norma Labounty,

Plaintiffs

v. **Docket No. 5:21-cv-00283**

KENNETH SCHATZ, KAREN SHEA, CINDY WOLCOTT, BRENDA GOOLEY, JAY SIMONS, ARON STEWARD, MARCUS BUNNELL, JOHN DUBUC, WILLIAM CATHCART, BRYAN SCRUBB, KEVIN HATIN, NICHOLAS WEINER, DAVID MARTINEZ, CAROL RUGGLES, TIM PIETTE, DEVIN ROCHON, AMELIA HARRIMAN, EDWIN DALE, MELANIE D'AMICO, ERIN LONGCHAMP, CHRISTOPHER HAMLIN, AND ANTHONY BRICE, all in their individual capacities,

Defendants

CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2022, I electronically filed **NOTICE OF APPEARANCE** with the Clerk of Court using the CM/ECF system. The CM/ECF system will provide service of such filing via Notice of Electronic Filing (NEF) to the following NEF parties:

Brooks G. McArthur, Esq. and David J. Williams, Esq.

And I also caused to be served, by U.S. Postal Service, the following non-NEF parties:

Andrew C. Boxer, Esq.
Boxer Blake & Moore, PLLC
P.O. Box 948
Springfield VT 05156-0948

Lisa M. Werner, Esq./Susan J. Flynn, Esq.
Clark, Werner & Flynn, P.C.
192 College Street
Burlington VT 05401

Bonnie J. Badgewick, Esq.
Hayes, Windish & Badgewick, P.C.
43 Lincoln Corners Way, Suite 205
Woodstock VT 05091

Michael J. Leddy, Esq.
Joseph A. Farnham, Esq.
McNeil, Leddy & Sheahan, P.C.
271 South Union Street
Burlington VT 05401

Dated at Montpelier, Vermont this 7th day of February, 2022.

Wesley M. Lawrence
THERIAULT & JOSLIN, P.C.
141 Main Street, Suite 4
Montpelier, VT 05602
Telephone: (802) 223-2381
wmlawrence@tjoslin.com

Attorneys for Defendant, Jay Simons

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

KATHY WELCH, ADMINISTRATOR OF THE ESTATE OF G.W., *et al.*,	)	
Plaintiffs,	)	
v.	)	Civil Case No. 5:21-cv-283
KENNETH SCHATZ, *et al.*,	)	
Defendants.	)	

NOTICE OF APPEARANCE

NOW COMES the undersigned, Joseph A. Farnham, Esq. of McNeil, Leddy & Sheahan, P.C., and hereby enters the firm's appearance on behalf of Marcus Bunnell, John Dubuc, and Kevin Hatin, Defendants in the above-captioned matter.

DATED at Burlington, Vermont, this 7th day of February 2022.

McNEIL, LEDDY & SHEAHAN, P.C.

BY: /s/ Joseph A. Farnham
Joseph A. Farnham, Esq.
271 South Union St.
Burlington, VT 05401
(802) 863-4531
jfarnham@mcneilvt.com

Attorneys for Defendant Marcus Bunnell, John Dubuc, and Kevin Hatin

600873/1

McNEIL
LEDDY &
SHEAHAN

271 South Union St.
Burlington, VT 05401
T 802.863.4531
F 802.863.1743

www.mcneilvt.com

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

KATHY WELCH, ADMINISTRATOR OF THE ESTATE OF G.W., *et al.*,	)	
Plaintiffs,	)	
v.	)	Civil Case No. 5:21-cv-283
KENNETH SCHATZ, *et al.*,	)	
Defendants.	)	

NOTICE OF APPEARANCE

NOW COMES the undersigned, Michael J. Leddy, Esq. of McNeil, Leddy & Sheahan, P.C., and hereby enters the firm's appearance on behalf of Marcus Bunnell, John Dubuc, and Kevin Hatin, Defendants in the above-captioned matter.

DATED at Burlington, Vermont, this 7th day of February 2022.

McNEIL, LEDDY & SHEAHAN, P.C.

BY: /s/ Michael J. Leddy
Michael J. Leddy, Esq.
271 South Union St.
Burlington, VT 05401
(802) 863-4531
mleddy@mcneilvt.com

Attorneys for Defendant Marcus Bunnell, John Dubuc, and Kevin Hatin

600873/1

McNEIL
LEDDY &
SHEAHAN

271 South Union St.
Burlington, VT 05401
T 802.863.4531
F 802.863.1743

www.mcneilvt.com

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, Administrator of The Estate of G.W., R.H., T.W., T.F. D.H., B.C., and A.L. by next friend Norma Labounty, Plaintiffs,	)	
v.	)	Civil Action No. 5:21-CV-00283
KENNETH SCHATZ, KAREN SHEA, CINDY WOLCOTT, BRENDA GOOLEY, JAY SIMONS, ARON STEWARD, MARCUS BUNNELL, JOHN DUBUC, WILLIAM CATHCART, BRYAN SCRUBB, KEVIN HATIN, NICHOLAS WEINER, DAVID MARTINEZ, CAROL RUGGLES, TIME PIETTE, DEVIN ROCHON, AMELIA HARRIMAN, EDWIN DALE, MELANIE D'AMICO, ERIN LONGCHAMP, CHRISTOPHER HAMLIN, and ANTHONY BRICE, all in their individual capacities, Defendants.	)	

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that Andrew C. Boxer, Esq., and Boxer Blake & Moore PLLC hereby enter their appearance on behalf of Defendants Kenneth Schatz, Karen Shea, Cindy Wolcott and Brenda Gooley.

DATED at Springfield, Vermont, this 8th day of February, 2022.

BOXER BLAKE & MOORE PLLC
Attorneys for Defendants
Kenneth Schatz, Karen Shea,
Cindy Wolcott & Brenda Gooley

By: Andrew C. Boxer
Andrew C. Boxer, Esq.
24 Summer Hill Street
P.O. Box 948
Springfield, VT 05156
(802) 885-2141
acboxer@boxerblake.com

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, Administrator of The Estate of G.W., R.H., T.W., T.F. D.H., B.C., and A.L. by next friend Norma Labounty, Plaintiffs,	)	
v.	)	Civil Action No. 5:21-CV-00283
KENNETH SCHATZ, KAREN SHEA, CINDY WOLCOTT, BRENDA GOOLEY, JAY SIMONS, ARON STEWARD, MARCUS BUNNELL, JOHN DUBUC, WILLIAM CATHCART, BRYAN SCRUBB, KEVIN HATIN, NICHOLAS WEINER, DAVID MARTINEZ, CAROL RUGGLES, TIME PIETTE, DEVIN ROCHON, AMELIA HARRIMAN, EDWIN DALE, MELANIE D'AMICO, ERIN LONGCHAMP, CHRISTOPHER HAMLIN, and ANTHONY BRICE, all in their individual capacities, Defendants.	)	

CERTIFICATE OF SERVICE

I, Andrew Boxer, counsel of record for the Defendants Kenneth Schatz, Karen Shea, Cindy Wolcott and Brenda Gooley certify that on February 8, 2022, I served *Defendants Notice of Appearance* with the Clerk of the Court using the CM/ECF system. The CM/ECF system will provide service of such filing via Notice of Electronic Filing (NEF) to the following NEF Parties:

Brooks G. McArthur, Esq
David J. Williams, Esq.
Jarvis, McArthurs & Williams
P.O. Box 902
Burlington, VT 05402
bmcarthur@jarvismcarthur.com
dwilliams@jarvismcarthur.com

Wesley Lawrence, Esq.
Theriault & Joslin, PC
141 Main Street, Ste 4
Montpelier, VT 05602
wmlawrence@tjoslin.com

Mick Leddy, Esq.
Joe Farnham, Esq.
McNeil Leddy & Sheahan
271 S Union St
Burlington, VT 05401
mleddy@mcneilvt.com
jfarnham@mcneilvt.com

RESPECTFULLY SUBMITTED this 8th day of February, 2022.

BOXER BLAKE & MOORE PLLC
Attorneys for Defendants
Kenneth Schatz, Karen Shea,
Cindy Wolcott & Brenda Gooley

By: Andrew C. Boxer

Andrew C. Boxer, Esq.
24 Summer Hill Street
P.O. Box 948
Springfield, VT 05156
(802) 885-2141
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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, Administrator of The Estate of G.W., R.H., T.W., T.F. D.H., B.C., and A.L. by next friend Norma Labounty, Plaintiffs,	)	
v.	)	Civil Action No. 5:21-CV-00283
KENNETH SCHATZ, KAREN SHEA, CINDY WOLCOTT, BRENDA GOOLEY, JAY SIMONS, ARON STEWARD, MARCUS BUNNELL, JOHN DUBUC, WILLIAM CATHCART, BRYAN SCRUBB, KEVIN HATIN, NICHOLAS WEINER, DAVID MARTINEZ, CAROL RUGGLES, TIM PIETTE, DEVIN ROCHON, AMELIA HARRIMAN, EDWIN DALE, MELANIE D'AMICO, ERIN LONGCHAMP, CHRISTOPHER HAMLIN, and ANTHONY BRICE, all in their individual capacities, Defendants.	)	

STIPULATED MOTION TO EXTEND TIME

Defendants hereby move to extend their time to respond to Plaintiffs' Complaint, pursuant to F.R.C.P. 6(b)(1)(A) to April 11, 2022. In support Defendants state as follows:

"When an act may or must be done within a specified time, the court may, for good cause, extend the time . . . if a request is made before the original time or its extension expires." F.R.C.P. 6(b)(1)(A). There is good cause to extend the time for Defendants to respond to the Complaint. This is a complex matter involving many individuals, a period of time spanning years, and a large volume of written material. All Defendants have only just obtained counsel and without an extension, counsel will be unable to familiarize themselves sufficiently with the case in order to respond to the Complaint.

Plaintiffs' counsel has graciously agreed to extend the deadline for Defendants to respond until April 11, 2022.

WHEREFORE, Defendants respectfully request that the Court grant this Motion and extend the deadline for all Defendants to respond to Plaintiffs' Complaint to April 11, 2022.

DATED at Springfield, Vermont, this 9th day of February, 2022.

BOXER BLAKE & MOORE PLLC
Attorneys for Defendants
Kenneth Schatz, Karen Shea,
Cindy Wolcott & Brenda Gooley

By: Andrew C. Boxer
Andrew C. Boxer, Esq.
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DATED at Burlington, Vermont, this 9th day of February, 2022.

JARVIS MCARTHUR & WILLIAMS
Attorneys for Plaintiffs

By: Brooks McArthur
Brooks G. McArthur, Esq
David J. Williams, Esq.
P.O. Box 902
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dwilliams@jarvismcarthur.com

DATED at Burlington, Vermont, this 9th day of February, 2022.

CLARK, WERNER, & FLYNN
Attorneys for Defendants
Amelia Harriman, Melanie D'Amico,
Edwin Dale & Erin Longchamp

By: Susan Flynn
Lisa Werner, Esq.
Susan J. Flynn, Esq.
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lisawerner@cwf-pc.com
susanflynn@cwf-pc.com

DATED at Montpelier, Vermont, this 9th day of February, 2022.

THERIAULT & JOSLIN, P.C.
Attorneys for Defendant
Jay Simons

By: Wesley Lawrence
Wesley Lawrence, Esq.
141 Main Street, Ste 4
Montpelier, VT 05602
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wmlawrence@tjoslin.com

DATED at Woodstock, Vermont, this 9th day of February, 2022.

WOODSTOCK LAW, PC
Attorneys for Defendant
William Cathcart

By: Bonnie Badgewick
Bonnie J. Badgewick, Esq.
43 Lincoln Corners Way, Suite 103
Woodstock, Vermont 05091
802-457-2123
bbadgewick@woodstockvtlaw.com

DATED at Burlington, Vermont, this 9th day of February, 2022.

MCNEIL LEDDY & SHEAHAN
Attorneys for Defendants
Marcus Bunnell, John Dubuc &
Kevin Hatin

By: Michael Leddy
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Joe Farnham, Esq.
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jfarnham@mcneilvt.com

DATED at Rutland, Vermont, this 9th day of February, 2022.

RYAN SMITH & CARBINE, LTD
Attorneys for Defendants
Anthony Brice & Chris Hamlin

By: Francesca Bove
Francesca Bove, Esq,
Andrew Maass, Esq.
98 Merchants Row
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AHM@rsclaw.com

DATED at Burlington, Vermont, this 9th day of February, 2022.

HEILMANN, EKMAN, COOLEY & GAGNON, INC.
Attorneys for Defendants
Nicholas Weiner, David Martinez,
Tim Piette, Devin Rochon &
Carol Ruggles

By: Jon Alexander
Jon Alexander, Esq.
Robin O. Cooley, Esq.
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802-864-4555
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rcooley@healaw.com

DATED at Burlington, Vermont, this 9th day of February, 2022.

SHEEHEY, FURLONG & BEHM P.C.
Attorneys for Defendants
Aron Steward & Bryan Scrubb

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, Administrator of The Estate of G.W., R.H., T.W., T.F. D.H., B.C., and A.L. by next friend Norma Labounty, Plaintiffs,	)	
v.	)	Civil Action No. 5:21-CV-00283
KENNETH SCHATZ, KAREN SHEA, CINDY WOLCOTT, BRENDA GOOLEY, JAY SIMONS, ARON STEWARD, MARCUS BUNNELL, JOHN DUBUC, WILLIAM CATHCART, BRYAN SCRUBB, KEVIN HATIN, NICHOLAS WEINER, DAVID MARTINEZ, CAROL RUGGLES, TIME PIETTE, DEVIN ROCHON, AMELIA HARRIMAN, EDWIN DALE, MELANIE D'AMICO, ERIN LONGCHAMP, CHRISTOPHER HAMLIN, and ANTHONY BRICE, all in their individual capacities, Defendants.	)	

CERTIFICATE OF SERVICE

I, Andrew Boxer, counsel of record for the Defendants Kenneth Schatz, Karen Shea, Cindy Wolcott and Brenda Gooley certify that on February 9, 2022, I served a *Stipulated Motion to Extend Time* with the Clerk of the Court using the CM/ECF system. The CM/ECF system will provide service of such filing via Notice of Electronic Filing (NEF) to the following NEF Parties:

Brooks G. McArthur, Esq
David J. Williams, Esq.
Jarvis, McArthurs & Williams
P.O. Box 902
Burlington, VT 05402
bmcarthur@jarvismcarthur.com
dwilliams@jarvismcarthur.com

Wesley Lawrence, Esq.
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Mick Leddy, Esq.
Joe Farnham, Esq.
McNeil Leddy & Sheahan
271 S Union St
Burlington, VT 05401
mleddy@mcneilvt.com
jfarnham@mcneilvt.com

RESPECTFULLY SUBMITTED this 9th day of February, 2022.

BOXER BLAKE & MOORE PLLC
Attorneys for Defendants
Kenneth Schatz, Karen Shea,
Cindy Wolcott & Brenda Gooley

By: Andrew C. Boxer

Andrew C. Boxer, Esq.
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Staci Bishop

From: cmecfhelpdesk@vtd.uscourts.gov
Sent: Thursday, February 10, 2022 8:57 AM
To: Courtmail@vtd.uscourts.gov
Subject: Activity in Case 5:21-cv-00283-gwc Welch et al v. Schatz et al Order on Motion for Extension of Time to Answer

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
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U.S. District Court

District of Vermont

Notice of Electronic Filing

The following transaction was entered on 2/10/2022 at 8:57 AM EST and filed on 2/10/2022
Case Name: Welch et al v. Schatz et al
Case Number: 5:21-cv-00283-gwc
Filer:
Document Number: 36(No document attached)

Docket Text:
ORDER granting [35] MOTION for Extension of Time to Answer [1] Complaint; Brenda Gooley, Kenneth Schatz, Karen Shea and Cindy Wolcott answers due 4/11/2022. Signed by Chief Judge Geoffrey W. Crawford on 2/10/2022. (This is a text-only Order.) (jal)

5:21-cv-00283-gwc Notice has been electronically mailed to:

David J. Williams, Esq dwilliams@jarvismcarthur.com, cparah@jarvismcarthur.com, kandresen@jarvismcarthur.com

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Brooks G. McArthur, Esq bmcarthur@jarvismcarthur.com, cparah@jarvismcarthur.com

Wesley M. Lawrence wmlawrence@tjoslin.com, neuane@tjoslin.com

Michael J. Leddy, Esq mleddy@mcneilvt.com, Administrators@mcneilvt.com

5:21-cv-00283-gwc Notice has been delivered by other means to:

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, Administrator of The Estate of G.W., R.H., T.W., T.F., D.H., B.C., AND A.L. by next Friend Norma Labounty, Plaintiffs	)	
v.	)	Civil Action No.: 5:21-CV-00283
KENNETH SCHATZ, KAREN SHEA, CINDY WOLCOTT, BRENDA GOOLEY, JAY SIMONS, ARON STEWARD, MARCUS BUNNELL, JOHN DUBUC, WILLIAM CATHCART, BRYAN SCRUBB, KEVIN HATIN, NICHOLAS WEINER, DAVID MARTINEZ, CAROL RUGGLES, TIM PIETTE, DEVIN ROCHON, AMELIA HARRIMAN, EDWIN DALE, MERANIE D'AMICO, ERIN LONGCHAMP, CHRISTOPHER HAMLIN, and ANTHONY BRICE, all in their individual capacities, Defendants	)	

NOTICE OF APPEARANCE

Heilmann, Ekman, Cooley & Gagnon, Inc. hereby enters its appearance on behalf of the Defendants Nicholas Weiner, David Martinez, Carol Ruggles, Tim Piette and Devin Rochon in this lawsuit.

Dated at Burlington, Vermont this 11th day of February, 2022.

HEILMANN, EKMAN, COOLEY & GAGNON, INC.
Attorneys for Defendants Nicholas Weiner, David Martinez, Carol Ruggles, Tim Piette and Devin Rochon

By: */s/ Jon T. Alexander, Esq.*

Jon T. Alexander, Esq.
Heilmann, Ekman, Cooley & Gagnon, Inc.
231 South Union Street, P.O. Box 216
Burlington, VT 05402-0231
802-864-4555
jalexander@healaw.com

Dated at Burlington, Vermont this 11th day of February, 2022.

HEILMANN, EKMAN, COOLEY & GAGNON, INC.
Attorneys for Defendants Nicholas Weiner, David Martinez, Carol Ruggles, Tim Piette and Devin Rochon

By: */s/ Robin O. Cooley, Esq.*
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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, Administrator of The Estate of G.W., R.H., T.W., T.F., D.H., B.C., AND A.L. by next Friend Norma Labounty, Plaintiffs	)	
v.	)	Civil Action No.: 5:21-CV-00283
KENNETH SCHATZ, KAREN SHEA, CINDY WOLCOTT, BRENDA GOOLEY, JAY SIMONS, ARON STEWARD, MARCUS BUNNELL, JOHN DUBUC, WILLIAM CATHCART, BRYAN SCRUBB, KEVIN HATIN, NICHOLAS WEINER, DAVID MARTINEZ, CAROL RUGGLES, TIM PIETTE, DEVIN ROCHON, AMELIA HARRIMAN, EDWIN DALE, MERANIE D'AMICO, ERIN LONGCHAMP, CHRISTOPHER HAMLIN, and ANTHONY BRICE, all in their individual capacities, Defendants	)	

NOTICE OF APPEARANCE

Heilmann, Ekman, Cooley & Gagnon, Inc. hereby enters its appearance on behalf of the Defendants Nicholas Weiner, David Martinez, Carol Ruggles, Tim Piette and Devin Rochon in this lawsuit.

Dated at Burlington, Vermont this 11th day of February, 2022.

HEILMANN, EKMAN, COOLEY & GAGNON, INC.
Attorneys for Defendants Nicholas Weiner, David Martinez, Carol Ruggles, Tim Piette and Devin Rochon

By: */s/ Jon T. Alexander, Esq.*

Jon T. Alexander, Esq.
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802-864-4555
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Dated at Burlington, Vermont this 11th day of February, 2022.

HEILMANN, EKMAN, COOLEY & GAGNON, INC.
Attorneys for Defendants Nicholas Weiner, David Martinez, Carol Ruggles, Tim Piette and Devin Rochon

By: */s/ Robin O. Cooley, Esq.*
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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, Administrator of the Estate of G.W., R.H., T.W., T.F., D.H., B.C., and A.L., by Next Friend Norma Labounty, Plaintiffs, v. KENNETH SCHATZ, KAREN SHEA, CINDY WOLCOTT, BRENDA GOOLEY, JAY SIMONS, KEVIN HATIN, ARON STEWARD, MARCUS BRUNNELL, JOHN DUBUC, WILLIAM CATHCART, BRYAN SCRUBB, NICHOLAS WEINER, DAVID MARTINEZ, CAROL RUGGLES, TIM PIETTE, DEVIN ROCHON, AMELIA HARRIMAN, MELANIE D'AMICO, EDWIN DALE, ERIN LONGCHAMP, CHRISTOPHER HAMLIN, and ANTHONY BRICE, all in their individual capacities, Defendants.	Civil Action No. 5:21-cv-00283

NOTICE OF APPEARANCE

NOW COME Susan J. Flynn and Lisa M. Werner, Esq. of the law firm Clark, Werner & Flynn, P.C. and hereby enter appearances on behalf of Defendants Amelia Harriman, Melanie D'Amico, Edwin Dale, and Erin Longchamp, in the above-captioned matter.

DATED at Burlington, Vermont, this 11 day of February 2022.

By: _____

Susan J. Flynn, Esq.
Clark, Werner & Flynn, P.C.
Attorneys for Defendant Harriman, D'Amico, Dale, and Longchamp
192 College Street
Burlington, VT 05401
802-865-0088
susanflynn@cwf-pc.com

DATED at Burlington, Vermont, this 11 day of February 2022.

By: _____

Lisa M. Werner, Esq.
Clark, Werner & Flynn, P.C.
Attorneys for Defendant Harriman, D'Amico, Dale, and Longchamp
192 College Street
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lisawerner@cwf-pc.com

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, Administrator of the Estate of G.W., R.H., T.W., T.F., D.H., B.C., and A.L., by Next Friend Norma Labounty, Plaintiffs, v. KENNETH SCHATZ, KAREN SHEA, CINDY WOLCOTT, BRENDA GOOLEY, JAY SIMONS, KEVIN HATIN, ARON STEWARD, MARCUS BRUNNELL, JOHN DUBUC, WILLIAM CATHCART, BRYAN SCRUBB, NICHOLAS WEINER, DAVID MARTINEZ, CAROL RUGGLES, TIM PIETTE, DEVIN ROCHON, AMELIA HARRIMAN, MELANIE D'AMICO, EDWIN DALE, ERIN LONGCHAMP, CHRISTOPHER HAMLIN, and ANTHONY BRICE, all in their individual capacities, Defendants.	Civil Action No. 5:21-cv-00283

CERTIFICATE OF SERVICE

I certify that I have today delivered *Notice of Appearances on behalf of Defendants Harriman, D'Amico, Dale, and Longchamp* to all other parties to this case as follows:

_x_ By first class mail by depositing it in the U.S. mail;

___ By personal delivery to _____ or his/her counsel;

_x_ Other. Explain: _____sent via email _____

The names and addresses of the parties/lawyers to whom the mail was addressed or personal delivery was made are as follows:

Brooks G. McArthur, Esq. and
David J. Williams, Esq.
Jarvis, McArthur & Williams, LLC
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Andrew C. Boxer, Esq.
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Wesley M. Lawrence, Esq.
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Joseph A. Farnham, Esq. and
Michael J. Leddy, Esq.
McNeil, Leddy & Sheahan, P.C.
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jfarnham@mcneilvt.com,
mleddy@mcneilvt.com

DATED at Burlington, Vermont, this 11 day of February 2022.

Signature: _____
Print Name: Susan J. Flynn, Esq.
Counsel for: Defendants Harriman, D'Amico, Dale, and Longchamp

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, Administrator of the Estate of G.W., R.H., T.W., T.F., D.H., B.C., and A.L., by Next Friend Norma Labounty, Plaintiffs, v. KENNETH SCHATZ, KAREN SHEA, CINDY WOLCOTT, BRENDA GOOLEY, JAY SIMONS, KEVIN HATIN, ARON STEWARD, MARCUS BRUNNELL, JOHN DUBUC, WILLIAM CATHCART, BRYAN SCRUBB, NICHOLAS WEINER, DAVID MARTINEZ, CAROL RUGGLES, TIM PIETTE, DEVIN ROCHON, AMELIA HARRIMAN, MELANIE D'AMICO, EDWIN DALE, ERIN LONGCHAMP, CHRISTOPHER HAMLIN, and ANTHONY BRICE, all in their individual capacities, Defendants.	)	Civil Action No. 5:21-cv-00283

NOTICE OF APPEARANCE

NOW COME Susan J. Flynn and Lisa M. Werner, Esq. of the law firm Clark, Werner & Flynn, P.C. and hereby enter appearances on behalf of Defendants Amelia Harriman, Melanie D'Amico, Edwin Dale, and Erin Longchamp, in the above-captioned matter.

DATED at Burlington, Vermont, this 11 day of February 2022.

By: _____

Susan J. Flynn, Esq.
Clark, Werner & Flynn, P.C.
Attorneys for Defendant Harriman, D'Amico, Dale, and Longchamp
192 College Street
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DATED at Burlington, Vermont, this 11 day of February 2022.

By: _____

Lisa M. Werner, Esq.
Clark, Werner & Flynn, P.C.
Attorneys for Defendant Harriman, D'Amico, Dale, and Longchamp
192 College Street
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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, Administrator of the Estate of G.W., R.H., T.W., T.F., D.H., B.C., and A.L., by Next Friend Norma Labounty, Plaintiffs, v. KENNETH SCHATZ, KAREN SHEA, CINDY WOLCOTT, BRENDA GOOLEY, JAY SIMONS, KEVIN HATIN, ARON STEWARD, MARCUS BRUNNELL, JOHN DUBUC, WILLIAM CATHCART, BRYAN SCRUBB, NICHOLAS WEINER, DAVID MARTINEZ, CAROL RUGGLES, TIM PIETTE, DEVIN ROCHON, AMELIA HARRIMAN, MELANIE D'AMICO, EDWIN DALE, ERIN LONGCHAMP, CHRISTOPHER HAMLIN, and ANTHONY BRICE, all in their individual capacities, Defendants.	Civil Action No. 5:21-cv-00283

CERTIFICATE OF SERVICE

I certify that I have today delivered *Notice of Appearances on behalf of Defendants Harriman, D'Amico, Dale, and Longchamp* to all other parties to this case as follows:

_x_ By first class mail by depositing it in the U.S. mail;

___ By personal delivery to _____ or his/her counsel;

_x_ Other. Explain: _____sent via email _____

The names and addresses of the parties/lawyers to whom the mail was addressed or personal delivery was made are as follows:

Brooks G. McArthur, Esq. and
David J. Williams, Esq.
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jfarnham@mcneilvt.com,
mleddy@mcneilvt.com

DATED at Burlington, Vermont, this 11 day of February 2022.

Signature: _____
Print Name: Susan J. Flynn, Esq.
Counsel for: Defendants Harriman, D'Amico, Dale, and Longchamp

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, ADMINISTRATOR OF THE
ESTATE OF G.W., R.H., T.W., T.F.,
D.H., B.C., and A.L., by next friend Norma Labounty

Plaintiffs, Civil Docket No. 5:21–cv-00283

v.

KENNETH SCHATZ, KAREN SHEA,
CINDY WOLCOTT, BRENDA GOOLEY,
JAY SIMONS, ARON STEWARD, MARCUS BUNNELL,
JOHN DUBUC, WILLIAM CATHCART,
BRYAN SCRUBB, KEVIN HATIN,
NICHOLAS WEINER, DAVID MARTINEZ,
CAROL RUGGLES, TIM PIETTE,
DEVIN ROCHON, AMELIA HARRIMAN,
EDWIN DALE, MELANIE D'AMICO,
ERIN LONGCHAMP, CHRISTOPHER HAMLIN,
and ANTHONY BRICE, all in their individual capacities.

Defendants.

NOTICE OF APPEARANCE

NOW COMES Bonnie Badgewick, Esq., of the law firm of WOODSTOCK LAW, PC, and hereby enters her APPEARANCE on behalf of Defendant WILLIAM CATHCART in the above-captioned matter.

Dated at Woodstock, Vermont this 17th day of February, 2022.

/s/ Bonnie Badgewick
Bonnie J. Badgewick, Esq.
WOODSTOCK LAW, PC
43 Lincoln Corners Way, Suite 103
Woodstock, Vermont 05091
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bbadgewick@woodstockvtlaw.com
ATTORNEYS FOR DEFENDANT
WILLIAM CATHCART

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, ADMINISTRATOR OF THE
ESTATE OF G.W., R.H., T.W., T.F.,
D.H., B.C., and A.L., by next friend Norma Labounty

Plaintiffs, Civil Docket No. 5:21–cv-00283

v.

KENNETH SCHATZ, KAREN SHEA,
CINDY WOLCOTT, BRENDA GOOLEY,
JAY SIMONS, ARON STEWARD, MARCUS BUNNELL,
JOHN DUBUC, WILLIAM CATHCART,
BRYAN SCRUBB, KEVIN HATIN,
NICHOLAS WEINER, DAVID MARTINEZ,
CAROL RUGGLES, TIM PIETTE,
DEVIN ROCHON, AMELIA HARRIMAN,
EDWIN DALE, MELANIE D'AMICO,
ERIN LONGCHAMP, CHRISTOPHER HAMLIN,
and ANTHONY BRICE, all in their individual capacities.

Defendants.

CERTIFICATE OF SERVICE

NOW COMES Bonnie Badgewick, Esq., of the law firm of WOODSTOCK LAW, PC, attorneys for Defendant WILLIAM CATHCART, and hereby certify that on the 17th day of February, 2022, I served the attached **NOTICE OF APPEARANCE** on the below identified counsel of record *via CM/ECF system and e-mail. The CM/ECF system will provide service of such filing(s) via Notice of Electronic Filing (NEF) to the following NEF parties:*

bmcarthur@jarvismcarthur.com
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dwilliams@jarvismcarthur.com
David J. Williams, Esq.

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Michael Leddy, Esq.
Joseph Farnham, Esq.

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susanflynn@cwf-pc.com
Lisa Werner, Esq.
Susan Flynn, Esq.

WOODSTOCK
LAW

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Ian Carleton, Esq.
Sarah Heim, Esq.

fmb@rsclaw.com
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Francesca Bove, Esq.
Andrew Maass, Esq.

Dated at Woodstock, Vermont this 17th day of February, 2022.

/s/ Bonnie Badgewick
Bonnie J. Badgewick, Esq.
WOODSTOCK LAW, PC
43 Lincoln Corners Way, Suite 103
Woodstock, Vermont 05091
802.457.2123
bbadgewick@woodstockvtlaw.com
ATTORNEYS FOR DEFENDANT
WILLIAM CATHCART

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, Administrator of The Estate of G.W., R.H., T.W., T.F. D.H., B.C., and A.L. by next friend Norma Labounty, Plaintiffs,	)	
v.	)	Civil Action No. 5:21-CV-00283
KENNETH SCHATZ, KAREN SHEA, CINDY WOLCOTT, BRENDA GOOLEY, JAY SIMONS, ARON STEWARD, MARCUS BUNNELL, JOHN DUBUC, WILLIAM CATHCART, BRYAN SCRUBB, KEVIN HATIN, NICHOLAS WEINER, DAVID MARTINEZ, CAROL RUGGLES, TIME PIETTE, DEVIN ROCHON, AMELIA HARRIMAN, EDWIN DALE, MELANIE D'AMICO, ERIN LONGCHAMP, CHRISTOPHER HAMLIN, and ANTHONY BRICE, all in their individual capacities, Defendants.	)	**NOTICE OF APPEARANCE**

PLEASE TAKE NOTICE that Francesca M. Bove, Esq., of the firm of Ryan Smith & Carbine, Ltd., enters her appearance with Andrew H. Maas, Esq., on behalf of the Defendants Christopher Hamlin and Anthony Brice, in the above-captioned matter and respectfully requests that a copy of all pleadings, motions, notices, and other papers herein be served on her at the address listed below.

Dated: Rutland, Vermont
March 1, 2022

RYAN SMITH & CARBINE, LTD.

By: ***/s/ Francesca M. Bove***

Francesca M. Bove, Esq.
Attorney for the Defendants
CHRISTOPHER HAMLIN AND ANTHONY BRICE
P.O. Box 310
Rutland, VT 05702-0310
(802) 786-1053
fmb@rsclaw.com

Certificate of Service

I, Francesca M. Bove, certify by my signature below that on March 1, 2022, I electronically filed this document with the Clerk of Court:

Notice of Appearance

using the CM/ECF system (from which it is available for viewing and downloading), which will send notification of such filing to and serve the following NEF parties:

Brooks G. McArthur, Esq. – bmcarthur@jarvismcarthur.com
David J. Williams, Esq. - dwilliams@jarvismcarthur.com
Andrew C. Boxer, Esq. – acboxer@boxerblake.com
Lisa Werner, Esq. – lisawerner@cwf-pc.com
Susan J. Flynn, Esq. – susanflynn@cwf-pc.com
Wesley Lawrence, Esq. – wmlawrence@tjoslin.com
Bonnie J. Badgewick, Esq. – bbadgewick@woodstockvtlaw.com
Mick Leddy, Esq. – mleddy@mcneilvt.com
Joseph Farnham, Esq. - jfarnham@mcneilvt.com
Jon Alexander, Esq. – jalexander@healaw.com
Robin O. Cooley, Esq. – rcooley@healaw.com
Ian Carleton, Esq. – icarleton@sheeheyvt.com
Sarah Heim, Esq. - sheim@sheeheyvt.com

I also caused to be served by U.S. Mail the following non-NEF Parties: NONE

DATED: March 1, 2022

/s/ Francesca M. Bove

Francesca M. Bove
RYAN SMITH & CARBINE, LTD.
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10596-001/1204822

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, Administrator of The Estate of G.W., R.H., T.W., T.F. D.H., B.C., and A.L. by next friend Norma Labounty, Plaintiffs, v. KENNETH SCHATZ, KAREN SHEA, CINDY WOLCOTT, BRENDA GOOLEY, JAY SIMONS, ARON STEWARD, MARCUS BUNNELL, JOHN DUBUC, WILLIAM CATHCART, BRYAN SCRUBB, KEVIN HATIN, NICHOLAS WEINER, DAVID MARTINEZ, CAROL RUGGLES, TIME PIETTE, DEVIN ROCHON, AMELIA HARRIMAN, EDWIN DALE, MELANIE D'AMICO, ERIN LONGCHAMP, CHRISTOPHER HAMLIN, and ANTHONY BRICE, all in their individual capacities, Defendants.	)	Civil Action No. 5:21-CV-00283 **NOTICE OF APPEARANCE**

PLEASE TAKE NOTICE that Andrew H. Maass, Esq., of the firm of Ryan Smith & Carbine, Ltd., enters his appearance with Francesca Bove, Esq., on behalf of the Defendants Christopher Hamlin and Anthony Brice, in the above-captioned matter and respectfully requests that a copy of all pleadings, motions, notices, and other papers herein be served on him at the address listed below.

Dated: Rutland, Vermont
March 1, 2022

RYAN SMITH & CARBINE, LTD.

By: ***/s/ Andrew H. Maass***

Andrew H. Maass, Esq.
Attorney for the Defendants
CHRISTOPHER HAMLIN AND ANTHONY BRICE
P.O. Box 310
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Certificate of Service

I, Andrew H. Maass, certify by my signature below that on March 1, 2022, I electronically filed this document with the Clerk of Court:

Notice of Appearance

using the CM/ECF system (from which it is available for viewing and downloading), which will send notification of such filing to and serve the following NEF parties:

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Andrew C. Boxer, Esq. – acboxer@boxerblake.com
Lisa Werner, Esq. – lisawerner@cwf-pc.com
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I also caused to be served by U.S. Mail the following non-NEF Parties: NONE

DATED: March 1, 2022

/s/ Andrew H. Maass

Andrew H. Maass
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10596-001/1210159

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, Administrator of The Estate of G.W., R.H., T.W., T.F. D.H., B.C., and A.L. by next friend Norma Labounty, Plaintiffs,	)	
v.	)	Civil Action No. 5:21-CV-00283
KENNETH SCHATZ, KAREN SHEA, CINDY WOLCOTT, BRENDA GOOLEY, JAY SIMONS, ARON STEWARD, MARCUS BUNNELL, JOHN DUBUC, WILLIAM CATHCART, BRYAN SCRUBB, KEVIN HATIN, NICHOLAS WEINER, DAVID MARTINEZ, CAROL RUGGLES, TIM PIETTE, DEVIN ROCHON, AMELIA HARRIMAN, EDWIN DALE, MELANIE D'AMICO, ERIN LONGCHAMP, CHRISTOPHER HAMLIN, and ANTHONY BRICE, all in their individual capacities, Defendants.	)	

NOTICE OF APPEARANCE

NOW COMES, Ian P. Carleton, of the law firm Sheehey Furlong & Behm P.C., and hereby enters his appearance as counsel on behalf of Defendants Aron Steward and Bryan Scrubb in the above-captioned matter.

Dated at Burlington, Vermont this 4th day of March, 2022.

ARON STEWARD and
BRYAN SCRUBB

By: */s/ Ian P. Carleton*
Ian P. Carleton, Esq.
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UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
DISTRICT OF VERMONT
FEDERAL BUILDING
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March 9, 2022

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Burlington, VT 05401

Re: *Welch, et al. v. Schatz, et al.*
Docket No. 5:21-cv-283

Dear Counsel:

The stipulated discovery schedule required by Local Rule No. 26(a)(1) and (2) has not been filed in the above-cited action. Please be advised that pursuant to Local Rule 26(a)(2), if the discovery schedule is not filed within the proper deadline, the case will be set for a scheduling conference.

Sincerely,

Pamela J. Lane
Courtroom Deputy
(802) 951-6395, ext. 147

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, Administrator of The Estate of G.W., R.H., T.W., T.F. D.H., B.C., and A.L. by next friend Norma Labounty, Plaintiffs,	)	
v.	)	Civil Action No. 5:21-CV-00283
KENNETH SCHATZ, KAREN SHEA, CINDY WOLCOTT, BRENDA GOOLEY, JAY SIMONS, ARON STEWARD, MARCUS BUNNELL, JOHN DUBUC, WILLIAM CATHCART, BRYAN SCRUBB, KEVIN HATIN, NICHOLAS WEINER, DAVID MARTINEZ, CAROL RUGGLES, TIM PIETTE, DEVIN ROCHON, AMELIA HARRIMAN, EDWIN DALE, MELANIE D'AMICO, ERIN LONGCHAMP, CHRISTOPHER HAMLIN, and ANTHONY BRICE, all in their individual capacities, Defendants.	)	

NOTICE OF APPEARANCE

NOW COMES Devin T. McKnight, of the law firm Sheehey Furlong & Behm P.C., and hereby enters his appearance as co-counsel on behalf of Defendants Aron Steward and Bryan Scrubb in the above-captioned matter.

Dated at Burlington, Vermont this 15th day of March, 2022.

ARON STEWARD and
BRYAN SCRUBB

By: */s/ Devin T. McKnight*

Devin T. McKnight, Esq.
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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, Administrator of The Estate of G.W., R.H., T.W., T.F. D.H., B.C., and A.L. by next friend Norma Labounty, Plaintiffs,	)	
v.	)	Civil Action No. 5:21-CV-00283
KENNETH SCHATZ, KAREN SHEA, CINDY WOLCOTT, BRENDA GOOLEY, JAY SIMONS, ARON STEWARD, MARCUS BUNNELL, JOHN DUBUC, WILLIAM CATHCART, BRYAN SCRUBB, KEVIN HATIN, NICHOLAS WEINER, DAVID MARTINEZ, CAROL RUGGLES, TIM PIETTE, DEVIN ROCHON, AMELIA HARRIMAN, EDWIN DALE, MELANIE D'AMICO, ERIN LONGCHAMP, CHRISTOPHER HAMLIN, and ANTHONY BRICE, all in their individual capacities, Defendants.	)	

CONSENTED-TO MOTION TO EXTEND TIME

Defendants hereby move pursuant to Federal Rule of Civil Procedure 6(b)(1)(A) to extend the time for all Defendants to respond to Plaintiffs' Complaint, from April 11, 2022 to April 25, 2022.

Defendants assert that good cause exists under Rule 6(b)(1)(A) for a two-week extension for several reasons. First, counsel Devin T. McKnight has recently substituted on this case for Defendants Aron Steward and Bryan Scrubb and, given the complexity of the matter and the large volume of written material covering multiple years, additional time is necessary for Mr. McKnight to review the materials and adequately respond to the Complaint on behalf of Defendants Steward and Scrubb. Second, and for similar reasons relating to the complexity of the case, allowing all

Defendants additional time to respond will ensure that counsel will be able to familiarize themselves sufficiently with the case in order to respond to the Complaint.

Plaintiffs' counsel has also graciously agreed to extend the deadline for Defendants to responduntil April 25, 2022.

WHEREFORE, Defendants respectfully request that the Court grant this Motion and extend the deadline for all Defendants to respond to Plaintiffs' Complaint to April 25, 2022.

DATED at Burlington, Vermont, this 31 day of March, 2022.

SHEEHEY FURLONG & BEHM P.C.
Attorneys for Defendants
Aron Steward & Bryan Scrubb

By: */s/ Devin T. McKnight*
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DATED at Burlington, Vermont, this 31 day of March, 2022.

BOXER BLAKE & MOORE PLLC
Attorneys for Defendants
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DATED at Burlington, Vermont, this 31 day of March, 2022.

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Edwin Dale & Erin Longchamp

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DATED at Montpelier, Vermont, this 31 day of March, 2022.

THERIAULT & JOSLIN, P.C.
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Jay Simons

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DATED at Woodstock, Vermont, this 31 day of March, 2022.

WOODSTOCK LAW, PC
Attorneys for Defendant
William Cathcart

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DATED at Burlington, Vermont, this 31 day of March, 2022.

MCNEIL LEDDY & SHEAHAN, PC
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Kevin Hatin

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jfarnham@mcneilvt.com

DATED at Rutland, Vermont, this 31 day of March, 2022.

RYAN SMITH & CARBINE, LTD
Attorneys for Defendants
Anthony Brice & Chris Hamlin

By: */s/ Francesca Bove*
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DATED at Burlington, Vermont, this 31 day of March, 2022.

HEILMANN, EKMAN, COOLEY & GAGNON, INC.
Attorneys for Defendants
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Tim Piette, Devin Rochon &
Carol Ruggles

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, Administrator of The Estate of G.W., R.H., T.W., T.F. D.H., B.C., and A.L. by next friend Norma Labounty, Plaintiffs,	)	
v.	)	Civil Action No. 5:21-CV-00283
KENNETH SCHATZ, KAREN SHEA, CINDY WOLCOTT, BRENDA GOOLEY, JAY SIMONS, ARON STEWARD, MARCUS BUNNELL, JOHN DUBUC, WILLIAM CATHCART, BRYAN SCRUBB, KEVIN HATIN, NICHOLAS WEINER, DAVID MARTINEZ, CAROL RUGGLES, TIM PIETTE, DEVIN ROCHON, AMELIA HARRIMAN, EDWIN DALE, MELANIE D'AMICO, ERIN LONGCHAMP, CHRISTOPHER HAMLIN, and ANTHONY BRICE, all in their individual capacities, Defendants.	)	

ORDER

For the reasons stated in the Consented-To Motion to Extend Time, the Motion is GRANTED. Defendants shall have until April 25, 2022 to respond to Plaintiffs' Complaint.

SO ORDERED.

Dated at Burlington, Vermont this _____ day of _____, 2022.

_____
Hon. Geoffrey W. Crawford
United States District Court Judge

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, Administrator of The Estate of G.W., R.H., T.W., T.F. D.H., B.C., and A.L. by next friend Norma Labounty,
Plaintiffs,
v.

KENNETH SCHATZ, KAREN SHEA, CINDY WOLCOTT, BRENDA GOOLEY, JAY SIMONS, ARON STEWARD, MARCUS BUNNELL, JOHN DUBUC, WILLIAM CATHCART, BRYAN SCRUBB, KEVIN HATIN, NICHOLAS WEINER, DAVID MARTINEZ, CAROL RUGGLES, TIM PIETTE, DEVIN ROCHON, AMELIA HARRIMAN, EDWIN DALE, MELANIE D'AMICO, ERIN LONGCHAMP, CHRISTOPHER HAMLIN, and ANTHONY BRICE, all in their individual capacities,
Defendants.

Civil Action No. 5:21-CV-00283

ORDER

For the reasons stated in the Consented-To Motion to Extend Time, the Motion is GRANTED. Defendants shall have until April 25, 2022 to respond to Plaintiffs' Complaint.

SO ORDERED.

Dated at Burlington, in the District of Vermont this 1st day of April, 2022.

Hon. Geoffrey W. Crawford
Chief Judge, U.S. District Court

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, Administrator of The Estate of G.W., R.H., T.W., T.F. D.H., B.C., and A.L. by next friend Norma Labounty, Plaintiffs,	)	
v.	)	Civil Action No. 5:21-CV-00283
KENNETH SCHATZ, KAREN SHEA, CINDY WOLCOTT, BRENDA GOOLEY, JAY SIMONS, ARON STEWARD, MARCUS BUNNELL, JOHN DUBUC, WILLIAM CATHCART, BRYAN SCRUBB, KEVIN HATIN, NICHOLAS WEINER, DAVID MARTINEZ, CAROL RUGGLES, TIM PIETTE, DEVIN ROCHON, AMELIA HARRIMAN, EDWIN DALE, MELANIE D'AMICO, ERIN LONGCHAMP, CHRISTOPHER HAMLIN, and ANTHONY BRICE, all in their individual capacities, Defendants.	)	

PARTIAL AND COMPLETE MOTION TO DISMISS

Defendant Aron Steward, Ph.D., moves pursuant to Federal Rule of Civil Procedure 12(b)(6) to partially dismiss Plaintiffs' Complaint, while Defendant Bryan Scrubb moves under the same provision to completely dismiss Plaintiffs' claims against him. For the reasons set forth below, as to Dr. Steward, Counts One, Two, Three, Eight, and Nine should be dismissed because they fail as a matter of law and, as to Mr. Scrubb, all counts should be dismissed for similar reasons.

Background

Plaintiffs, all juveniles, allege that Defendants, all employees or supervisors with the Department of Children and Families ("DCF"), violated both their constitutional rights and their common law rights while they were being held at Woodside Juvenile Rehabilitation Center ("Woodside"), Middlesex Adolescent Center, and the Natchez Trace Youth Academy in

Tennessee. Generally, Plaintiffs' core allegation is that various Defendants violated Plaintiffs' rights by allegedly formulating, administering, and enforcing policies for physically restraining Plaintiffs and for placing Plaintiffs in solitary confinement.

Beyond this core complaint, Plaintiffs' specific allegations are complex, involving 22 Defendants, three facilities, and multiple alleged incidents over at least a three-year period. Given this complexity, rather than summarize all of Plaintiffs' allegations against all Defendants, this Motion to Dismiss focuses on those allegations brought against Mr. Scrubb and Dr. Steward.

For Mr. Scrubb, this is simple. Aside from being named in the case caption and being described in the "Parties" section of the Complaint as "a staff member at the woodside Juvenile Rehabilitation Center, Essex, Vermont," (Complaint ¶ 18), Plaintiffs do not mention Mr. Scrubb at all. Accordingly, and as described in detail below, Plaintiffs' claims against him should be dismissed.

Unlike Mr. Scrubb, Plaintiffs do make some factual allegations against Dr. Steward, although those allegations are fairly limited.[1] She "was the Clinical Director at the Woodside Juvenile Rehabilitation Center, Essex, Vermont." (Complaint ¶ 14.) Although she was not responsible for formulating the policies relating to physical restraint and solitary confinement, (*see id.* ¶ 42), or indeed any policies meant to control or confine Plaintiffs, the Complaint alleges that Dr. Steward signed orders that approved of physically restraining and confining certain Plaintiffs. (*Id.* 131, 142, 144-45, 153, 200.) Further discovery will show that Dr. Steward did not preapprove either policy and, in fact, worked diligently to ensure that all of the juveniles at Woodside received proper clinical care under the circumstances. However, even accepting those

[1] It appears that Dr. Steward is only named 12 times in the 297 allegations in the Complaint.

allegations as true at this stage of the proceedings, many of Plaintiffs' complaints against Dr. Steward should be dismissed as a matter of law. Those allegations are discussed in detail below.

Legal Analysis

This Court needs no reminder of the standard applicable to motions to dismiss.[2] Here, as a matter of law, that standard requires partial dismissal of the claims against Dr. Steward and complete dismissal of the claims against Mr. Scrubb for three reasons: first, Plaintiffs' conspiracy claims are insufficient for three independent reasons discussed in detail below; second, Plaintiffs fail to plausibly allege a First Amendment violation; and third and finally, Plaintiffs do not allege that Defendant Scrubb was personally involved in any of the claimed constitutional violations, nor do Plaintiffs claim that Dr. Steward was personally involved in the alleged First Amendment violation.

I. Plaintiffs' Conspiracy Claims Should Be Dismissed For Three Independent Reasons.

Plaintiffs' Complaint contains four conspiracy claims: Count One, alleging Defendants conspired to violate the Eighth Amendment's ban on cruel and unusual punishment, (Complaint ¶¶ 221–26); Count Two, claiming Defendants conspired to violate the Eight and Fourteenth Amendment's ban on the use of excessive force, (*id.* ¶¶ 227–29); Count Three, asserting

[2] To survive a motion to dismiss pursuant to Fed.R.Civ.P. 12(b)(6), a complaint must "provide the grounds upon which [its] claim rests." *ATSI Commc'ns, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 98 (2d Cir. 2007). A plaintiff must also allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007*); see also* Fed.R.Civ.P. 8(a)(2) (pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief"). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In assessing the adequacy of the pleadings, a court must accept all factual assertions as true and draw all reasonable inferences in favor of the plaintiff. *See Wilson v. Merrill Lynch & Co., Inc.*, 671 F.3d 120, 128 (2d Cir. 2011); ATSI Commc'ns, 493 F.3d at 98. A complaint is properly dismissed, where, as a matter of law, "the allegations in [it], however true, could not raise a claim of entitlement to relief." *Twombly*, 550 U.S. at 558. Conversely, this presumption of truth "is inapplicable to legal conclusions," and therefore the court need not credit "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Iqbal*, 556 U.S. at 678.

Defendants conspired to violate Plaintiffs' due process rights (*id.* ¶¶ 230–35); and Count Eight, claiming Defendants conspired to retaliate against Plaintiffs R.H. and T.F. after they registered complaints about the alleged abuse they suffered at Woodside. All four claims have been brought under 42 U.S.C. § 1985(3)[3] and all four claims should be dismissed.

To establish a claim under Section 1985(3), Plaintiffs must show: (1) the existence of a conspiracy; (2) for the purpose of depriving Plaintiffs, either directly or indirectly, of equal protection of the laws, or of equal privileges and immunities under the laws; (3) an act in furtherance of the conspiracy; and (4) injury to Plaintiffs' person or property or deprivation of any right of a citizen of the United States. *Mian v. Donaldson, Lufkin & Jenrette Sec. Corp.*, 7 F.3d 1085, 1087 (2d Cir. 1993); *United Brotherhood of Carpenters & Joiners of America v. Scott*, 463 U.S. 825, 828–29 (1983)). Further, the conspiracy must be motivated by "some racial or perhaps otherwise class-based, invidious discriminatory animus behind the conspirators' action." *United Brotherhood*, 463 U.S. at 829; *see also Knight v. City of New York*, 303 F. Supp. 2d 485, 501 (S.D.N.Y. 2004).

All four conspiracy claims must be dismissed here because (A) Plaintiffs fail to sufficiently plead the existence of a conspiracy; (B) Plaintiffs fail to allege a class-based animus; and (C) Plaintiffs' conspiracy claims are barred by the intercorporate conspiracy doctrine.

A. Plaintiffs Did Not Sufficiently Plead The Existence Of A Conspiracy.

As an initial matter, Plaintiffs have not alleged facts showing an agreement or concerted action among all Defendants.

[3] While Plaintiffs do not specify a subdivision of 42 U.S.C. § 1985 in their Complaint, Plaintiffs must be relying on subdivision (3), which is the only subdivision which could have any possible application based on the underlying allegations (subdivision (1) relates to a conspiracy to prevent a federal officer from performing his duties; subdivision (2) relates to obstruction of justice, e.g. a party, witness or juror in a federal action).

A claim for civil conspiracy requires "(1) an agreement . . . ; (2) to act in concert to inflict an unconstitutional injury; and (3) an overt act done in furtherance of that goal causing damages." *Ciambriello v. Cnty. of Nassau*, 292 F.3d 307, 324–25 (2d Cir. 2002).[4]

Here, Plaintiffs have alleged that all Defendants "conspired" to violate their constitutional rights, but have provided no facts demonstrating all 22 Defendants entered in an agreement to achieve or otherwise acted in concert to achieve an unlawful end. (*See generally* Complaint.) While exact specifics are not required, "the pleadings must present facts tending to show agreement and concerted action." *Anilao v. Spota*, 774 F.Supp.2d 457, 512–13 (E.D.N.Y. 2011) (citations omitted) (emphasis added). Plaintiffs must "make an effort to provide some details of time and place and the alleged effects of the conspiracy . . . [including] facts to demonstrate that the defendants entered into an agreement, express or tacit, to achieve the unlawful end." *Warren v. Fischl*, 33 F.Supp.2d 171, 177 (E.D.N.Y. 1999) (citations omitted). Conclusory, vague, and general allegations are insufficient to support a conspiracy claim. *Ciambriello*, 292 F.3d at 325.

The allegations here do not even reach this conclusory level. In fact, the words "agreed," "agreement," and "concert" each only appear once in the Complaint, while the word "together" never appears. Plaintiffs merely label Counts One through Three "conspiracies," state Defendants "conspired," and expect those two words to carry the day. They cannot, as there are no facts to indicate an agreement, tacit or otherwise, among Defendants. This is especially true

[4] Some cases discussed herein involved conspiracies based on 42 U.S.C. § 1983, rather than § 1985. "For purposes of pleading requirements, however, the Second Circuit has not distinguished between a conspiracy to deprive a person of his constitutional rights under § 1983 and one under § 1985(3); and thus, those cases pertaining to § 1983 conspiracies have equal applicability in this action based upon § 1985(3)." *Upper Hudson Planned Parenthood, Inc. v. Doe*, No. 90-CV-1084, 1991 WL 183863, at *18, n.32 (N.D.N.Y. Sept. 16, 1991); *see also K.D. ex rel. Duncan v. White Plains Sch. Dist.*, 921 F. Supp. 2d 197, 208 (S.D.N.Y. 2013) ("[T]o withstand a motion to dismiss a § 1983 or § 1985(3) conspiracy claim, a plaintiff must provide some factual basis supporting a meeting of the minds, such as that defendants entered into an agreement, express or tacit, to achieve the unlawful end," augmented by "some details of time and place and the alleged effects of the conspiracy." (internal quotation marks omitted)).

given the complexity of Plaintiffs' allegations. Plaintiffs have named 22 Defendants, ranging from the DCF Commissioner to the individual staff members at Woodside, and have alleged a series of disparate acts involving seven different Plaintiffs in three different locations over a three-year period from 2017 to 2020. Moreover, it appears that different Defendants were involved in different incidents, without substantial overlap between Defendants. Given these complex relationships and time frames, Plaintiffs' nominal assertion of a "conspiracy" rings hollow. At best, the Complaint alleges that some Defendants were present together during some incidents but "[t]he mere fact that [Defendants] were all present at the time of the alleged constitutional violations is insufficient to support a conspiracy claim." *Delee v. Hannigan*, 729 F. App'x 25, 32 (2d Cir. 2018) (citing *Warr v. Liberatore*, 270 F. Supp. 3d 637, 650 (W.D.N.Y. 2017)). Even if the Complaint alleged that all Defendants allegedly cooperated in each incident – and the Complaint does not – that would still not indicate that there was a "prior agreement" among Defendants to commit the allegedly unlawful violations. *Harrell v. New York State Dep't of Corr. & Cmty. Supervision*, No. 15-CV-7065(RA), 2019 WL 3821229, at *11 (S.D.N.Y. Aug. 14, 2019).

In short, Plaintiffs have failed to allege facts showing an agreement or concerted action among all Defendants and so their conspiracy claims must be dismissed.

B. Plaintiffs' Conspiracy Counts Are Also Barred Because Plaintiffs Failed To Allege A Class-Based Animus.

Even if Plaintiffs had alleged sufficient facts to support their conspiracy claims, Plaintiffs' conspiracy counts would still fail because no allegation suggests Defendants were motivated by some racial animus. *See United Brotherhood*, 463 U.S. at 829 (requiring "some racial or perhaps otherwise class-based, invidious discriminatory animus"). Nothing in the Complaint suggests Defendants' alleged conspiracy was motivated by Plaintiffs' membership in

a protected class nor, in fact, do Plaintiffs even claim that they are members of a historically suspect class.[5] Because Plaintiffs cannot meet this requirement, their conspiracy counts must be dismissed on this alternative ground. *See Palmieri v. Lynch*, 392 F.3d 73, 86 (2d Cir. 2004) (affirming dismissal where the plaintiff failed to allege "some racial or perhaps otherwise class-based, invidious discriminatory animus behind the conspirators' action").

C. Plaintiffs' Conspiracy Claims Are Barred By The Intercorporate Conspiracy Doctrine.

Finally, and again on alternative grounds, Plaintiffs' conspiracy claims also fail because the alleged conspirators are all members of the same public entity, i.e. DCF.

Under the intracorporate conspiracy doctrine, employees of a single corporate or municipal entity, each acting within the scope of his or her employment, are legally incapable of conspiring together. *See Herrmann v. Moore*, 576 F.2d 453, 459 (2d Cir. 1978) ("[T]here is no conspiracy [under section 1985] if the conspiratorial conduct challenged is essentially a single act by a single corporation acting exclusively through its own . . . officers[ ] and employees . . . . "); *see also Kogut v. Cnty. of Nassau*, Nos. 06 Civ. 6695(JS)(WDW), 06 Civ. 6720(JS)(WDW), 2009 WL 2413648, at *12–13 (E.D.N.Y. Aug. 3, 2009) (dismissing § 1983 conspiracy claim under the intracorporate conspiracy doctrine because plaintiff asserted a conspiracy only between actors of the same municipal entity); *see also Liner v. Fischer*, 2013 WL 3168660, *2, n.12

[5] The only potential classes that Plaintiffs could belong do not constitute a class within the meaning of § 1985(3). Courts interpreting § 1985(3) have noted that, to prevent § 1985(3) from being read broadly and becoming a general federal tort law, the statute should be applied only to "historically suspect class[es] such as race, national origin, or sex." *D'Amato v. Wisconsin Gas Co.*, 760 F.2d 1474, 1486 (7th Cir. 1985). Accordingly, to the extent some Plaintiffs here may suffer from mental disabilities, "courts have explicitly held that disabled individuals do not constitute a 'class' within the meaning of § 1985(3)." *Trautz v. Weisman*, 819 F. Supp. 282, 292 (S.D.N.Y. 1993), *see, e.g., D'Amato*, 760 F.2d at 1486–87 ("The legislative history of Section 1985(3) does not suggest a concern for the handicapped."); *Story v. Green*, 978 F.2d 60, 64 (2d Cir. 1992) (noting that disability has not generally been considered a suspect or quasi-suspect classification under the equal protection clause). Likewise, Plaintiffs' status as juveniles does not place them in a protected class because "age is not a suspect classification under the Equal Protection Clause." *Gregory v. Ashcroft*, 501 U.S. 452, 470 (1991).

(S.D.N.Y. June 24, 2013) (dismissing § 1983 conspiracy claim where all defendants were DOCCS employees acting within the scope of employment). That is plainly the case here, as all Defendants are described as being either supervisors or employees of DCF. (Complaint ¶¶ 8–29.)

Further, while an exception exists if the employees are "pursuing personal interests wholly separate and apart from the entity by whom they were employed," that is plainly not the case here. *See Cusamano v. Sobek*, 604 F. Supp. 2d at 469–70 (collecting cases). Instead, the gravamen of Plaintiffs' Complaint focuses on the work Defendants allegedly performed on behalf of DCF. Because Defendants are, in fact, members of DCF, Plaintiffs' conspiracy claims are barred by the intracorporate conspiracy doctrine.

II. Plaintiffs' First Amendment Claims Should Be Dismissed Because They Are Not Adequately Pled.

In Count Nine, Plaintiffs claim that "while Plaintiffs R.H. and T.F. were detained at Woodside, Defendants retaliated against R.H. and T.F. after they registered complaints about the abuse they suffered at Woodside in violation of Plaintiffs' constitutional rights." (Complaint ¶ 276.) As this count is not supported by sufficient factual allegations, it should be dismissed.

To establish a prima facie case of First Amendment retaliation, Plaintiffs must demonstrate: "(1) that the speech or conduct at issue was protected, (2) that [Defendants] took adverse action against [Plaintiffs], and (3) that there was a causal connection between the protected speech and the adverse action." *Gill v. Pidlypchak*, 389 F.3d 379, 380 (2d Cir. 2004) Notably, claims involving prisoners or other persons in custody should be approached "with skepticism and particular care, because virtually any adverse action taken against a prisoner by a prison official—even those otherwise not rising to the level of a constitutional violation—can be

characterized as a constitutionally proscribed retaliatory act." *Davis v. Goord*, 320 F.3d 346, 352 (2d Cir. 2003) (internal quotation marks omitted).

Here, Plaintiffs advance only two conclusory allegations relating to their First Amendment retaliation claim: (1) that "Defendants retaliated against R.H. and T.F. after they registered complaints about the abuse they suffered at Woodside in violation of Plaintiffs' constitutional rights" (Complaint ¶ 276); and (2) that "[w]hen the Office of the Juvenile Defender registered complaints about the conditions of confinement at Woodside, Woodside officials retaliated against the juveniles on whose behalf the complaints had been made, interfered with their right to counsel, and pressured at least one of them to sign notes to his attorneys indicating that they should withdraw a motion for a protective order filed in the Vermont Superior Court, Family Division." (Complaint ¶ 48.) These claims are not sufficient to raise an inference of retaliatory conduct.

Admittedly, the specific allegations relating to R.H. and T.F. could plausibly be construed as adverse at this stage in the proceedings, (*see* Complaint ¶¶ 132-149, 171-180), but Plaintiffs provide no facts describing who committed these retaliatory actions or how this alleged retaliation causally connected to Plaintiffs' protected activity. Nor do they describe Plaintiffs' supposedly protected activity in any detail; it is not clear where these alleged complaints were registered or to whom. At the most basic, "to satisfy the causation requirement, allegations must be sufficient to support the inference that the speech played a substantial part in the adverse action." *Davis*, 320 F.3d at 354. That inference cannot be made from the threadbare allegations here, and so Plaintiffs' First Amendment claims must be dismissed.

III. All Of Plaintiffs' Claims Against Defendant Bryan Scrub Should Be Dismissed For Lack of Personal Involvement, As Should Their First Amendment Claims Against Defendant Aron Steward.

Finally, all of the claims against Defendant Bryan Scrubb should be dismissed because Plaintiffs fail to make any allegations at all regarding Mr. Scrubb, let alone allege that Mr. Scrubb was personally involved in the constitutional violations. Likewise, albeit on a more limited basis, Plaintiffs' Count Nine claim that Dr. Steward violated their First Amendment right to petition the government should be dismissed because Plaintiffs do not advance any facts suggesting Dr. Steward was involved in the alleged First Amendment violation.

In order to succeed on a Section 1983 claim for a constitutional violation, "a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution." *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009); *see also Raspardo v. Carlone*, 770 F.3d 97, 115 (2d Cir. 2014) ("If a defendant has not personally violated a plaintiff's constitutional rights, the plaintiff cannot succeed on a § 1983 action against the defendant.")

A. Plaintiffs Have Failed To Allege Any Personal Involvement By Bryan Scrubb.

All of the claims brought against Mr. Scrubb must be dismissed because Plaintiffs make no claim that Mr. Scrubb was personally involved in any of the alleged constitutional violations. In fact, Mr. Scrubb is barely mentioned in Plaintiffs' Complaint. He is listed in the caption of the Complaint and is only described once in the body of the Complaint. That is in the section labeled, Parties: "Defendant Bryan Scrubb was a staff member at the Woodside Juvenile Rehabilitation Center, Essex, Vermont at all times relevant to this Complaint." (Complaint ¶ 18.) Besides this single sentence, Plaintiffs make no allegations at all relating to Mr. Scrubb. As a result, their § 1983 claims against Mr. Scrubb must fail because they fail to allege Mr.

Scrubb personally violated any of Plaintiffs' constitutional rights. *Crichlow v. Fischer*, No. 12-CV-7774 NSR, 2015 WL 678725, at *6 (S.D.N.Y. Feb. 17, 2015) ("[M]any of the defendants named in the caption are not named in any part of the complaint itself, and thus no allegations of personal involvement as to these defendants have been made and Plaintiff's Section 1983 claims against them fail."); *Dove v. Fordham Univ.*, 56 F. Supp. 2d 330, 335 (S.D.N.Y. 1999) ("It is well-settled that where the complaint names a defendant in the caption but contains no allegations indicating how the defendant violated the law or injured the plaintiff, a motion to dismiss the complaint in regard to that defendant should be granted." (internal quotations omitted); *McAvoy v. DeMarco*, No. 14–CV–6293, 2015 WL 1802601, at *5 (E.D.N.Y. Apr. 16, 2015) (finding no basis for defendant's personal involvement where he was not named in the body of the complaint).

B. Plaintiffs Have Failed To Allege Dr. Steward Was Personally Involved In The Alleged First Amendment Violation.

Likewise, the allegations that Dr. Steward – along with the other Defendants – violated R.H. and T.F.'s First Amendment rights, (Complaint ¶¶ 272-276), should be dismissed because Plaintiffs fail to allege that Dr. Steward (or indeed any of the other Defendants) was personally involved in the alleged retaliation.

As described above, Plaintiffs make the conclusory claim that "Defendants retaliated against R.H. and T.F," (Complaint ¶ 276), and further complain that "Woodside officials retaliated against the juveniles." (Complaint ¶ 48.) Aside from these conclusory allegations generally referring to "Defendants" and "Woodside officials," Plaintiffs fail to advance any facts showing how Dr. Steward violated the First Amendment. *See Dove*, 56 F. Supp. 2d at 335.

The same is true of those allegations relating specifically to R.H. and T.F. While Defendants claim that Dr. Steward took actions against R.H. that could plausibly be construed as

adverse, (*see* Complaint ¶ 142 ("Defendant Steward approved the orders sending R.H. into solitary confinement")); (*id.* ¶ 144 ("Defendant Steward signed the orders authorizing the physical restraint of R.H.")), Defendants make no claim that Dr. Steward's allegedly adverse actions related in any way to R.H.'s protected speech or conduct. In fact, there are no specific allegations that R.H. even engaged in protected speech or conduct. Likewise, the allegations relating to T.F. offer even less support for Dr. Steward's alleged personal involvement, because Dr. Steward is not even mentioned. (*See* Complaint ¶ 171-180.)

In short, the First Amendment retaliation claims against Dr. Steward must be dismissed because Plaintiffs do not advance any facts suggesting Dr. Steward was involved in the alleged First Amendment violation.

IV. Conclusion.

For the reasons discussed above, Counts One, Two, Three, Eight, and Nine brought against Dr. Steward should be dismissed because they fail as a matter of law and, as to Mr. Scrubb, all counts should be dismissed for the same reason.

Dated at Burlington, Vermont this 25th day of April, 2022.

ARON STEWARD and
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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, Administrator of The Estate of G.W., R.H., T.W., T.F. D.H., B.C., and A.L. by next friend Norma Labounty, Plaintiffs, v. KENNETH SCHATZ, KAREN SHEA, CINDY WALCOTT, BRENDA GOOLEY, JAY SIMONS, ARON STEWARD, MARCUS BUNNELL, JOHN DUBUC, WILLIAM CATHCART, BRYAN SCRUBB, KEVIN HATIN, NICHOLAS WEINER, DAVID MARTINEZ, CAROL RUGGLES, TIME PIETTE, DEVIN ROCHON, AMELIA HARRIMAN, EDWIN DALE, MELANIE D'AMICO, ERIN LONGCHAMP, CHRISTOPHER HAMLIN, and ANTHONY BRICE, all in their individual capacities, Defendants.	)	Civil Action No. 5:21-CV-00283

DEFENDANTS SCHATZ, SHEA, WALCOTT, AND GOOLEYS' MOTION TO DISMISS

Defendants Kenneth Schatz, Karen Shea, Cindy Walcott, and Brenda Gooley move per V.R.C.P. 12(b)(6) to dismiss Plaintiffs' complaint against them. Plaintiffs, former residents of a juvenile detention and treatment center, contend that Defendants, former and current government officials, violated their constitutional rights and committed common law torts in connection with abuse they allegedly suffered while detained at the center. But because Plaintiffs have failed to allege these Defendants' personal involvement and overcome the presumption they were exercising professional judgment, these supervisory officials cannot be held liable. Additionally, Plaintiffs have failed to state a claim for relief with respect to several counts. And as a result,

Plaintiffs' claims against Schatz, Shea, Walcott, and Gooley should be dismissed.

Background

Plaintiffs are former residents of Vermont's Woodside Juvenile Rehabilitation Center (Woodside) in the town of Essex. During that time the Department for Children and Families (the Department) operated Woodside as a residential treatment facility that provided in-patient psychiatric, mental health, and substance abuse services in a secure setting.[1] Woodside accepted adolescents who had been adjudicated or charged with a delinquency or criminal act.[2]

But before 2011, and the events of this matter, Woodside was run solely as a secure detention and treatment facility for youthful offenders.[3] Reflecting this original role, and as the Plaintiffs' Complaint notes, Woodside has the appearance and layout of a prison.

Up until its closure in 2020, and throughout the Plaintiffs' respective time there, Woodside was Vermont's only locked-door juvenile facility. Hospitals could provide involuntary treatment—but at their discretion. Woodside, on the other hand, could not turn away residents—the only limit being the age of the potential resident.[4] As a result, Woodside had to take in the highest needs youths involved in the juvenile justice system even if Woodside could not meet the needs of those youths.[5]

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[1] 33 V.S.A. § 5801(a) (2018) (repealed Jul. 1, 2021) ("The Woodside Juvenile Rehabilitation Center in the town of Essex shall be operated by the Department for Children and Families as a residential treatment facility that provides in-patient psychiatric, mental health, and substance abuse services in a secure setting").

[2] *Id*.

[3] 2011 Vermont Laws, No. 3 (eff. Feb. 17, 2011) (amending 33 V.S.A. § 5801) (("The Woodside juvenile rehabilitation center in the town of Essex shall be operated by the department for children and families *solely as a secure detention and treatment facility for juvenile offenders*.") (emphasis added)).

[4] *See e.g.* 33 V.S.A. § 5801(d) (2018).

[5] *See* Ex. A, Ltr. frm. DCF Defs. Schatz & Shea to RLSIU, Nov. 16, 2018 ("Woodside is specifically exempt from the application of Rule 5.08, which provides: A Residential Treatment Program shall accept and serve only those children/youth whose needs can be met by the services provided by the program. Woodside is exempt from this rule as an acknowledgement that it is the only program in the state that

Defendant Kenneth Schatz was the Commissioner of the Department from September 2014 through June 2020. Within the Department, Defendant Cindy Walcott served as Deputy Commissioner with the Family Services Division up until June 2016. She then retired from regular service and worked as a temporary employee from July 2016 through September 2019, as Senior Policy and Operations Manager with the Family Services Division. Defendant Karen Shea was also a Deputy Commissioner, and Walcott's successor to the Family Services Division, serving from July 2016 to June 2019. And Defendant Brenda Gooley worked in the Department as the Family Services Division Director of Operations throughout the relevant 2016 to 2020 period.

Plaintiffs have now sued the Commissioner, Deputy Commissioners, and Director (collectively, the Officials), among many others, in their personal capacities for alleged abuse Plaintiffs suffered while residents at Woodside from 2016 to 2020. Plaintiffs' claims, in general, assert alleged instances of confinement, restraint, treatment, and punishment. Plaintiffs argue that these claimed abuses amount to constitutional violations entitling them to relief under 42 U.S.C. §§ 1983, 1985, as well as common-law torts.

Plaintiffs nominally assert a total of 12 counts. Though these 12 counts are overlapping, they contain multiple causes of action, and in general do not identify which of the 22 named defendants they are directed to. These listed counts are:

(1) § 1985 conspiracy to violate the Eighth Amendment's ban on cruel and unusual punishment;

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cannot reject youth for admission.").

This letter is cited by Plaintiffs in their complaint. As a result, it (along with several other documents relied on by Plaintiffs and attached here as exhibits) can be properly considered without the need for the Court to convert this motion to dismiss to one for summary judgment. *See Levy v. Southbrook Inter. Investments, Ltd*., 263 F.3d 10, 13, n.3 (2d Cir. 2001); *see also Kaplan v. Morgan Stanley & Co., Inc.*, 2009 VT 78, ¶ 10, n. 4, 186 Vt. 605, 987 A.2d 258.

(2) § 1985 conspiracy to violate the Eighth and Fourteenth Amendments' ban on the use of excessive force;
(3) § 1985 conspiracy to violate Plaintiffs' right to due process of law as guaranteed by the Fourteenth Amendment;
(4) § 1983 violation of the Eighth Amendment's ban on cruel and unusual punishment;
(5) § 1983 violation of the Eighth and Fourteenth Amendments' ban on the use of excessive force;
(6) § 1983 deprivation of Plaintiffs' right to due process of law as guaranteed by the Fourteenth Amendment;
(7) § 1983 deliberate indifference to violations of Plaintiffs' rights perpetrated by staff members at the Natchez Trace Youth Academy;
(8) § 1985 conspiracy to violate the First Amendment's right to petition the government for a redress of grievances;
(9) § 1983 violation of R.H. and T.F.s' First Amendment right to petition the government for a redress of grievances;
(10) assault and battery;
(11) intentional infliction of emotional harm; and
(12) gross negligence and reckless supervision of persons in their custody and control.

Legal Standard

Under Rule 12(b)(6), a complaint or any portion thereof may be dismissed at any time when it is apparent from the face of the pleadings that the plaintiff has failed to state a claim upon which relief can be granted. In evaluating motions under Rule 12(b)(6), courts are "not bound to accept as true a legal conclusion couched as a factual allegation."[6] A complaint must "state a claim to relief that is plausible on its face."[7] This means that the complaint must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable

[6] *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

[7] *Twombly*, 550 U.S. at 570.

for the misconduct alleged."[8]

Discussion

Accepting Plaintiffs' well plead allegations as true, they have failed to make their case for the Officials' liability. First, the Officials' exercise of professional judgment entitles them to good-faith immunity barring Plaintiffs' claims of Fourteenth Amendment Due Process violations (Count 6). Second, Plaintiffs have failed to state a claim in regard to the Officials' alleged deliberate indifference to excessive force (Counts 5 & 7). Third, Plaintiffs have failed to plead the Officials' personal involvement for alleged violations of the ban on cruel and usual punishment, ban on excessive force, as well as violation of the right to petition the government for redress of a grievance (Counts 4, 5, 7, 9). Fourth, absolute immunity shields the Officials from Plaintiffs' common law torts (Counts 10, 11, 12). Fifth, absent allegations of a denial of equal protection, Plaintiffs have failed to state a claim for § 1985(3) conspiracy (Counts 1, 2, 3, 8). Sixth, given the Plaintiffs were not criminal convicts, they have failed to state a claim for violations of the Eighth Amendment (Counts 1, 2, 4, 5, 7). And seventh, the Estate of G.W.'s claims did not survive G.W.'s death (Counts 1-8, 10-12).

1. **The Officials' exercise of professional judgment shields them from liability for alleged Fourteenth Amendment violations**.

In Counts 6 of their Complaint, Plaintiffs allege that the Officials[9] violated their Fourteenth Amendment Due Process rights in that they confined, restrained, treated, and punished Plaintiffs. These alleged acts, Plaintiffs contend, deprived them of their protected liberty interest, entitling them to relief under § 1983.

[8] *Iqbal*, 556 U.S. at 678.

[9] This count is not directed to the Officials alone. Instead, the count refers only to "Defendants," without further distinction among the 22 named defendants.

In *Youngberg v. Romeo*, the U.S. Supreme Court held that as with convicted criminals, individuals involuntarily committed have a protected Due Process liberty interest in being free from bodily restraint.[10] But while *Youngberg* Court recognized this right, it cautioned that the right is "not absolute."[11] In operating institutions, the Court explained, "there are occasions where it is necessary for the state to restrain the movement of residents."[12] For example, restraint is often needed to protect not only the residents but others as well from violence.[13] As a result, the question is not whether a liberty interest has been infringed, but rather, whether the extent of- or nature of- the restraint is a constitutional violation of a due process.[14]

To make this assessment, one must balance "the liberty of the individual and the demands of organized society."[15] That said, "[i]f there is to be any uniformity to protecting these interests"—"this balancing cannot be left to the unguided discretion of a judge or jury."[16] Thus, per *Youngberg*, "the Constitution requires only that Courts make certain that professional judgment *in fact was exercised*."[17] *In other words, it is not for the courts to decide which professional acceptable choices should have been made*.[18]

In announcing this standard, the *Youngberg* Court acknowledged that persons who have been involuntarily committed are entitled to more considerate treatment and conditions of

[10] *Youngberg v. Romeo*, 457 U.S. 307, 315-16 (1982).

[11] *Id*., 457 U.S. at 319-20.

[12] *Id*., 457 U.S. at 320.

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Id*., 457 U.S. at 321.

[17] *Id*. (emphasis added).

[18] *Id*. (emphasis added).

confinement than criminals (whose conditions of confinement are meant to punish).[19] Nevertheless, the standard the state must meet to justify restraints or conditions of less than absolute safety are "lower than compelling or substantial."[20] Using those tests would place too undue a burden on administering institutions and unnecessarily restrict the exercise of professional judgment.[21]

So, the Court mandated that interference by the federal judiciary with the internal operations of these institutions should be minimized.[22] And the Court explained that there is no reason to think that judges or juries are better qualified than the appropriate professionals in making such decisions.[23]

Finally, the *Youngberg* Court also held that in an action for damages against a professional in their individual capacity—"the professional will not be liable if he was unable to satisfy his normal professional standards because of budgetary constraints."[24] In that situation, the Court elucidated, good-faith immunity would also bar liability.[25]

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[19] *Id.*, 457 U.S. at 321-22.

[20] *Id.*, 457 U.S. at 322.

[21] *Youngberg*, 457 U.S. at 322. *See also P.C. v. McLaughlin*, 913 F.2d 1033, 1039 (2d Cir. 1990) ("The doctrine nicely balances the need to provide redress when an official abuses his or her public office against the costs of compelling government officials to shoulder the burden of defending themselves against suit. These costs include deterring individuals from accepting public employment, inhibiting officials in the discharge of their duties, diverting employees' energies from public duties and forcing them to bear the expense of litigation.").

[22] *Youngberg*, 457 U.S. at 322.

[23] *Id.*, 457 U.S. at 323.

[24] *Id.*

[25] *Id.*

A. The policies and procedures that led to the confinement and restraint Plaintiffs complain of show that professional judgment was used.

Presently, per *Youngberg*, for Plaintiffs' claims that they were confined, restrained, etc. to survive, they must overcome the presumption that the Officials exercised professional judgment. Plaintiffs have failed, however, to allege sufficient facts to overcome that presumption.

First, Plaintiffs have failed to allege (and cannot in any event) sufficient facts to show that the policies at Woodside regarding seclusion and restraint were not based on the exercise of professional judgment.

Rather, Plaintiffs appear to acknowledge that professional judgment was used in that they cite to the system of control tactics used at Woodside.[26] Yet as the *Youngberg* Court admonished, it is not for the courts to decide whether the best course was taken. Indeed, that the Officials exercised professional judgment is reflected in that Woodside had licenses to operate.[27]

Per 33 V.S.A. § 306(b) the Department is responsible for the promulgation of standards governing the regulation of residential treatment programs for children and youths. These

[26] Pls. Compl. at ¶ 42.

[27] *See* Ex. B, 2015-2016 Lic.; Ex. C, 2016-2017 Lic. The Plaintiffs do not reference these licenses in their Complaint. Nonetheless it is settled that materials that are a matter of public record may be considered in a motion to dismiss. *See Byrd v. City of New York*, No. 04-1396-CV, 2005 WL 1349876, at * 1 (2d Cir. Jun. 8, 2005) (citing *Blue Tree Hotel Inv. (Can.), Ltd. v. Starwood Hotels & Resorts Worldwide, Inc.*, 369 F.3d 212, 217 (2d Cir.2004) (stating that courts "may also look to public records, including complaints filed in state court, in deciding a motion to dismiss"); *Kramer v. Time Warner, Inc*., 937 F.2d 767, 774 (2d Cir.1991) (noting that documents filed with the court are subject to judicial notice, and affirming Rule 12(b)(6) dismissal of securities fraud case where the district court considered documents filed with the Securities and Exchange Commission without expressly taking judicial notice of them); *Cowen v. Ernest Codelia, P.C*., No. 98 Civ. 5548, 2001 WL 856606, at *1 (S.D.N.Y. July 30, 2001) (citing court of appeals cases in explaining that court may consider public documents on Rule 12(c) motion based on res judicata to determine whether claims are barred by prior litigation)). *See also Kaplan*, 2009 VT 78, ¶ 10, n. 4, ("it is well settled that, in ruling on a Rule 12(b)(6) motion to dismiss, courts may properly consider matters subject to judicial notice, such as statutes and regulations, and matters of public record") (citing *Tellabs, Inc. v. Makor Issues & Rights, Ltd*., 551 U.S. 308, 322, 127 S.Ct. 2499, 168 L.Ed.2d 179 (2007) (in ruling on a motion to dismiss, "courts must consider the complaint in its entirety, as well as ... documents incorporated into the complaint by reference, and matters of which a court may take judicial notice")).

standards require, among other things, that a:

> Residential Treatment Program shall ensure children/youth the following rights:
> - to be served under humane conditions with respect for their dignity and privacy;
> - to receive services that promotes their growth and development;
> - to receive gender specific, culturally competent and linguistically appropriate service;
> - to receive services in the least restrictive and most appropriate environment;
> - to access written information about the providers policies and procedures that pertain to the care and supervision of children, including a description of behavior management practices;
> - to be served with respect for confidentiality;
> - to be involved, as appropriate to age, development and ability, in assessment and service planning;
> - to be free from harm by caregivers or others, and from unnecessary or excessive use of restraint and seclusion/isolation;
> - to file complaints and grievances without fear of retaliation.[28]

In furtherance of these rights, the regulations prescribe exhaustive rules regarding medical care,[29] behavior management,[30] physical restraint,[31] seclusion,[32] documentation,[33] and restraint and seclusion monitoring.[34] Additionally, these regulations also cover the physical environment and safety, including sleeping areas, and seclusion rooms.[35] And under these regulations, a program cannot operate without a license from the Department's Residential Licensing Unit.[36]

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[28] Vt. Admin. Code 12-3-508:201.

[29] Vt. Admin. Code 12-3-508:633-636.

[30] *Id*. at 648-649.

[31] *Id*. at 650-657.

[32] *Id*. at 658-666.

[33] *Id*. at 667-669.

[34] *Id*. at 670.

[35] Vt. Admin. Code 12-3-508:700 Physical Environment and Safety.

[36] Vt. Admin. Code 12-3-508:101 ("A Residential Treatment Program shall not be operated without the formal prior approval of the Department for Children and Families, Residential Licensing Unit (hereafter "Licensing Authority").").

That the Residential Licensing Unit granted Woodside licenses shows that Woodside had in place the policies and procedures required to operate the institution. Additionally, the licenses show that in the areas where the licensing authority found compliance issues—Woodside and its leadership were taking the necessary corrective action.[37] That the instances of restraint, seclusion, etc. complained of arose under these policies is immaterial. Having secured a license to operate after an exhaustive assessment by the RLI, it would be impossible for plaintiff to establish that the Officials did not exercise professional judgment. [38]

All the Constitution requires is that there was some professional judgment exercised. And here the Plaintiffs have failed to allege any facts showing no professional judgment was exercised.

B. Because Woodside could not refuse admission regardless of a person's needs, the Officials lacked viable alternatives.

Second, in addition to Plaintiffs' failure to allege sufficient facts rebutting the presumption of professional judgment, Plaintiffs also overlook the practicalities at issue with their placement at Woodside.

The Constitution does not guarantee an institutionalized person the least restrictive environment.[39] This principle comes into play here in that Woodside, regardless of whether it can serve their needs, was the only program in the State that cannot reject youth for admission.[40]

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[37] *See* Ex. B, 2015-2016 Lic. at p. 15-21; Ex. C, 2016-2017 Lic. at p. 14-15.

[38] That these regulations exist and by statute are promulgated by the Commissioner arguably means that the Commissioner and his Deputies exercised their professional judgment in any event.

[39] *P.C. v. McLaughlin*, 913 F.2d 1033, 1042 (2d. 1990) (citing *Society for Good Will to Retarded Children, Inc. v. Cuomo*, 737 F.2d 1239, 1249 (2d Cir. 1984)).

[40] *See* Ex. A, Ltr. frm. DCF Defs. Schatz & Shea to RLSIU, Nov. 16, 2018 ("Woodside is specifically exempt from the application of Rule 5.08, which provides: A Residential Treatment Program shall accept and serve only those children/youth whose needs can be met by the services provided by the program. *Woodside is exempt from this rule as an acknowledgement that it is the only program in the state that cannot reject youth for admission*.") (emphasis added).

Woodside even had an exemption from a regulation requiring residential treatment programs to accept only those children whose needs could be met by the program.[41]

This facet of Woodside reflected the larger issue of the lack of viable alternatives for many of Woodside's residents. Woodside was a melting pot of residents with different high-level needs. As Plaintiffs themselves note in their complaint, per the layout and characteristics of Woodside, it was designed as a detention facility for juveniles. As cited above, in 2011, however, Woodside's statute was amended, and it became a residential treatment program. Yet this statutory mandate did not come with a change to the layout of Woodside. Woodside was not originally designed and constructed for the role later foisted on it.

Despite these inherent limitations, Woodside nevertheless had an interest in maintaining order and security at the facility.[42] This interest is not punitive as the Plaintiffs claim.[43] Rather it is a valid interest even in places of civil confinement (as opposed to criminal lockups). So, while Plaintiffs allege instances of restraint, seclusion, or treatment that may not have been the best or least restrictive option given their individual treatment needs—these instances reflected the professional judgment of what Woodside and the Officials could offer given the collision of incompatible design principles, roles, and lack of alternatives.

In *P.C. v. McLaughlin*, the Second Circuit held that various Vermont state employees, including the Commissioner of Mental Health and various directors, assistants, and division chiefs were entitled to immunity on a young man's statutory and constitutional rights violation claims.[44]

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[41] *See* Ex. B, 2015-2016 Lic. at p. 7; Ex. C, 2016-2017 Lic. at p. 7.

[42] *Rosado v. Maxymillian*, No. 20-3965-cv, 2022 WL 54181, at * 3 (2d Cir. 2022) (quoting *Ahlers v. Rabinowitz*, 684 F.3d 53, 61 (2d Cir. 2012)).

[43] *Id.*

[44] *See P.C. v. McLaughlin*, 913 F.2d at 1042-43 (holding that exercise of professional judgment barred

The Department of Mental Health had placed P.C. at Brandon Training School, "a state-owned residential school for severely retarded individuals."[45] A later administrative hearing determined that P.C. did not need to be confined at Brandon because he was not a danger to himself and since Brandon could not provide the appropriate level of care, treatment, and habilitation for him. As a result, Brandon denied P.C. admission. Nevertheless, because the Department of Mental Health did not have a residential placement available, P.C. remained at Brandon. While at Brandon, P.C. was then sexually assaulted.

The *McLaughlin* Court held, however, that the various officials were entitled to immunity on P.C.'s claim that their placement of him at Brandon violated his rights. The Court explained that the officials' decision to place P.C. at Brandon "was prompted by the total lack of any viable alternative, and compelled by the necessity to provide him with food, shelter, clothing and medical care."[46] Then citing *Youngberg*, the *McLaughin* Court held that the officials were entitled to immunity.[47]

In reaching this decision, the *McLaughlin* Court noted that P.C.'s life had been hard—but it emphasized that those hardships were not due to the various state employees' actions.[48] The appellate court acknowledged that it understood how the district court judge viewing the unfortunate scenario believed that it needed to deny the employees' request for immunity.[49] But at the end of the day, it is not for the court to fix the problems, only decide whether the laws

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claims against Vermont Department of Mental Health employees, including the Commissioner, for the placement and alleged liberty deprivations because of "the total lack of any viable alternative, and compelled by the necessity to provide [plaintiff] with food, shelter, clothing and medical care").

[45] *Id*., 913 F.2d at 1038.

[46] *Id*., 913 F.2d at 1043.

[47] *Id*.

[48] *Id*. 913 F.2d at 1037.

[49] *Id*., 913 F.2d at 1036.

were violated.[50]

Presently, as in *McLaughlin*, the Officials lacked a viable alternative and were at the mercy of circumstances beyond their control, i.e., budget, design, statutory obligations, etc. As a result, immunity bars liability for Fourteenth Amendment violations.

2. There is no recognized claim for deliberate indifference to excessive force and even if there was, Plaintiffs' allegations do not rise to the level of deliberate indifference.

The Plaintiffs contend at Count 5 of their complaint that the Officials[51] were deliberately indifferent to excessive force used against them at Woodside. This force, Plaintiffs maintain, violated the Fourteenth Amendment's ban on excessive force. Similarly, Plaintiffs also allege at Count 7 that the Officials were deliberately indifferent to excessive force used against them while they were detained at an out-of-state facility. But there are several problems with these claims.

First, § 1983 jurisprudence does not recognize an excessive-force claim based on deliberate indifference. Deliberate indifference applies to conditions of confinement that violate Due Process[52]. Courts do recognize a § 1983 claim for excessive force. But there are no instances of a court combining the two causes of action, as Plaintiffs attempt to do here.

That there is no hybrid claim makes sense when one considers how it would apply to defendants like the Officials.

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[50] *Id.*, 913 F.2d at 1037.

[51] The claim of deliberate indifference to excessive force is subsumed within the stated claim of excessive force. But the Count fails to distinguish among the 22 named defendants (despite the varying roles of level of involvement each had with Woodside). For purposes of this motion, the Officials will give the Plaintiffs the benefit of the doubt and assume that the deliberate indifference claim was directed to them, given that they had no personal involvement in the alleged use of excessive force.

[52] *See e.g. Darnell v. Pineiro*, 849 F.3d 17, 29 (2d Cir. 2017) ("[a] pretrial detainee may establish a § 1983 claim for allegedly unconstitutional conditions of confinement by showing that the officers acted with deliberate indifference to the challenged conditions").

Excessive force § 1983 claims are directed at instances where a government actor purposely or knowingly uses force that was objectively unreasonable.[53] These claims generally concern discrete events, e.g. a takedown, restraint, hold, etc. by a police officer or prison guard. In other words, the act giving rise to the claim occurs without time for deliberation, or for the actor to report to a supervisor that he intends to use excessive force.

Meanwhile for an official to be at fault for deliberate indifference they must be aware of a substantial risk of harm and do nothing about it.[54] This requirement that the official be aware of the risk of harm precludes an excessive force violation from also giving rise to a deliberate indifference claim. In almost every instance, the official cannot be aware of the act of excessive force before it happens. And in cases where the alleged excessive force is pervasive, for example restraint methods in a prison, then the claim is for violation of Fourteenth Amendment Due Process rights regarding conditions of confinement.[55]

But even assuming arguendo that § 1983 jurisprudence recognized a deliberate indifference to excessive force claim, Plaintiffs' claims would still fail.

In their complaint, Plaintiffs aver that the RLSIU's investigations found instances of painful compliance techniques, use of physical restraints without due course, as well as other

[53] *See Kingsley v. Hendrickson*, 576 U.S. 389, 396-97 (2015) ("we agree with the dissenting appeals court judge, the Seventh Circuit's jury instruction committee, and Kingsley, that a pretrial detainee must show only that the force purposely or knowingly used against him was objectively unreasonable").

[54] *See generally Darnell v. Pineiro*, 849 F.3d 17, 35 (2d Cir. 2017) ("to establish a claim for deliberate indifference to conditions of confinement under the Due Process Clause of the Fourteenth Amendment, the pretrial detainee must prove that the defendant-official acted intentionally to impose the alleged condition, or recklessly failed to act with reasonable care to mitigate the risk that the condition posed to the pretrial detainee even though the defendant-official knew, or should have known, that the condition posed an excessive risk to health or safety").

[55] *See generally Darnell*, 849 F.3d at 29 ("A pretrial detainee may establish a § 1983 claim for allegedly unconstitutional conditions of confinement by showing that the officers acted with deliberate indifference to the challenged conditions.").

issues of confinement.[56] After noting that these reports were provided to the Officials, Plaintiffs summarily suggest that the Officials failed to do anything in response.[57]

While Plaintiffs do note that the Officials provided a letter is response to the reports, Plaintiffs maintain that this response was not detailed enough.[58] There are several problems with this characterization.

First, the letter itself is not the flippant brushoff Plaintiffs' complaint suggests. Rather, the letter provides a detailed explanation of the nature of Woodside's role[59] as well as addressing the main areas of concern raised by the reports: retaliation, grievance procedure, de-escalation, restraint approach, the North Unit, supervision documentation, and placements.[60] In fairness to Plaintiffs, the letter did identify some findings from the reports that the Department disagreed with.[61] But the Department provided an 11-page table of RLSIU's findings and Woodside/the Department's responses to the same.[62] Whether by mere inadvertence, or by design, however, Plaintiffs fail to note that the Department provided this attachment. In any event, this document shows that once the Department, including the Officials, were made aware of issues at Woodside, or at least allegations of problems, they responded.

Under these circumstances, it cannot be said that the Department or the Officials were deliberately indifferent to instances of excessive force at Woodside.

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[56] Pls.' Compl. at ¶¶ 64-68.

[57] *Id*. at ¶¶ 77-81.

[58] *Id*. at ¶¶ 78, 80.

[59] *See* Ex. A, Ltr. frm. DCF Defs. Schatz & Shea to RLSIU at p. 1-2, Nov. 16, 2018.

[60] *Id*. at p. 2-3.

[61] *Id*. at p. 3.

[62] *Id*. (attachment).

Deliberate indifference is the same as recklessly disregarding a risk.[63] To be liable the official must know of and disregard an excessive risk to a person's health and safety.[64] Even then though, officials who actually know of a substantial risk to a person's "health or safety may be found free from liability if they responded reasonably to the risk, even if the harm ultimately was not averted."[65]

Here, Plaintiffs have not even alleged facts that show they faced an excessive risk to their health and safety. Instead, all they have alleged are isolated instances of staff employing control techniques and seclusion in response to extreme behavior from the Plaintiffs.

But even assuming arguendo that there was an excessive risk, they still cannot show that such a risk was disregarded. Rather, as outlined above, once the concerns were brought to the Department's attention via the RLSIU reports, the Officials responded reasonably addressing each issue and where necessary, indicating that action will be taken—including re-evaluating relevant policies.[66]

In addition to Woodside, Plaintiffs also contend the Officials were deliberately indifferent to instances of excessive force at Natchez Trace Youth Academy.

Natchez Trace is a residential treatment facility for young men in Tennessee. Per the complaint, D.H. & R.H. were sent by the Department to Natchez Trace.

In support of their claim here, Plaintiffs cite West Virginia Department of Education's decision in 2015 to stop placing WV youth at Natchez Trace.[67] Additionally, they aver that in

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[63] *Farmer v. Brennan*, 511 U.S. 825, 836 (1994).

[64] *Id.*, 511 U.S. at 837.

[65] *Id.*, 511 U.S. at 844.

[66] *See* Ex. A, Ltr. frm. DCF Defs. Schatz & Shea to RLSIU & Attachment, Nov. 16, 2018. *See also* Ex. C, 2016-2017 Lic. at p. 14.

[67] Pls.' Compl. at ¶ 85.

2017, the Vermont Office of Juvenile Defender told Defendants Longchamp and D'Amico of abuse at the facility,[68] and that in the same year, a mother of a child at Natchez told Defendants Schatz, Walcott, and D'Amico that her child was abused there.[69] Then Plaintiffs summarily conclude that Schatz, Walcott, and D'Amico didn't take the complaints seriously and placed Plaintiff R.H. at Natchez Trace nonetheless.[70]

Again, assuming arguendo that the WV report establishes there was an excessive risk of harm to health and safety—Plaintiffs still have not alleged facts sufficient to show that the Defendants were aware of that risk. At most, Plaintiffs allege that the Defendants were aware of a single complaint from the mother.

But it is well-established that an allegation that an official ignored a letter of protest and request for investigation is insufficient to hold the official liable for the allegation.[71] And as a result, Plaintiffs' lone claim that a mother complained of abuse at Natchez is not enough to plead that the Officials were deliberately indifferent to excessive force at Natchez.

3. Plaintiffs have failed to plead the Officials' personal involvement.

Plaintiffs assert several claims against the Officials that are not predicated on any action that these specific defendants took. To wit, at Count 4 Plaintiffs allege that "Defendants" secluded and restrained Plaintiffs in violation of the Eighth Amendment's ban on cruel and unusual punishment. While at Count 5 they argue that "Defendants" used force in violation of the Eighth and Fourteenth Amendments' ban on excessive force. And then Plaintiffs aver at

[68] *Id*. at ¶ 88.

[69] *Id*. at ¶ 93.

[70] *Id*. at ¶ 96.

[71] *Walters v. Hofmann*, No. 1:09-cv-84, 2009 WL 6329145, at * 5 (quoting *Greenwald v. Coughlin*, 1995 WL 232736, at * 8 (S.D.N.Y. Apr. 19, 1995)).

Count 9 Plaintiffs contend that "Defendants" retaliated against Plaintiffs after they registered complaints. Plaintiffs do not allege that the Officials did any of the acts giving rise to these claims. Rather, it appears that Plaintiffs claim the Officials are liable as the supervisors of those persons who did act.

To make out a § 1983 claim, however, a plaintiff must plead that each government official defendant—through the official's own actions—has violated the Constitution.[72] In other words, there is no special rule for supervisor liability.[73] Instead, a plaintiff must plead and prove that each defendant through their own actions violated the Constitution.[74] The factors necessary to establish a violation will necessarily vary with the Constitutional provision at issue—because the elements of the different Constitutional violations also vary.[75] Thus, in analyzing whether a supervisory official can be liable for injuries inflicted by others, courts "must analyze the same elements that define the Constitutional tort for the direct actors."[76]

Presently, Plaintiffs have failed to plead how the Officials satisfy the elements for any of these alleged Constitutional violations.

To show excessive force under the Fourteenth Amendment, a plaintiff must show that the defendant used force purposefully or knowingly against them that was objectively unreasonable.[77] Yet there are no facts in the complaint that demonstrate that the Officials used

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[72] *Tangreti v. Bachman*, 983 F.3d 609, 616 (2d Cir. 2020) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009)).

[73] *Id*., *Tangreti*, 983 F.3d at 618 ("Simply put, there's no special rule of liability for supervisors. The test for them is the same as the test for everyone else") (quoting *Porro v. Barnes*, 624 F.3d 1322, 1328 (10th Cir. 2010)).

[74] *Id*. (quoting *Iqbal*, 556 U.S. at 676).

[75] *Id*. (quoting *Iqbal*, 556 U.S. at 676).

[76] *Stinson v. City of New York*, No, 18-CV-0027, 2021 WL 3438284, at * 11 (S.D.N.Y. Jul. 6, 2021).

[77] *See Kingsley v. Hendrickson*, 576 U.S. 389, 396-97 (2015).

force against the Plaintiffs—let alone being purposeful, knowing, or unreasonable.

Meanwhile, First Amendment grievance claims require five things: (1) assertion that a state actor took some adverse action against an inmate; (2) because of; (3) prisoners protected conduct, and that such action; (4) chilled the inmate's exercise of their First amendment rights; and (5) that action did not advance a legitimate correctional goal.[78] In this case, however, Plaintiffs again have failed to plead any facts as to the Officials that in any way satisfy this five-factor test.

4. Plaintiffs' common-law tort claims fail against the Officials.

In addition to the nine federal law claims, Plaintiffs also assert three pendant state law claims. These claims are for assault and battery, intentional infliction of emotional distress, and reckless supervision. But all of these tort claims fail due to a combination of the Officials' absolute immunity; Plaintiffs' failure to plead vicarious liability; and the Officials' qualified immunity along with Vermont's Tort Claims Act.

A. The Officials are entitled to absolute immunity.

Absolute immunity applies to judges, legislators, and the state's highest executive officers when they are acting within their respective authorities.[79]

Turning to the defendant Officials, Commissioner Schatz was at all relevant times the highest executive officer at the Department. Thus, he is entitled to absolute immunity if he was acting within the scope of his authority.

Per 3 V.S.A. § 3052, the Commissioner administers the law of the Department and supervises and controls all staff functions. While under 33 V.S.A. § 104, the Department is

[78] *Gill v. Pidlypchak*, 389 F.3d 379, 380 (2d Cir. 2004).

[79] *See Levinsky v. Diamond*, 151 Vt. 178, 185, 559 A.2d 1073, 1078 (1989).

responsible for administering a program for youthful offenders, including secure detention and treatment programs.[80] Plaintiffs contend that Schatz committed these torts in the placement and supervision of Plaintiffs at Woodside. Thus, all of these actions fall within the scope of 3 V.S.A. § 3052 and 33 V.S.A. § 104. And so, Defendant Schatz is entitled to absolute immunity on these claims.

In addition to Commissioner Schatz, the Deputies, Shea and Walcott, are also protected by absolute immunity. While these two defendants are not *the* highest executive at the Department, nonetheless, the nature of their positions and work entitle them to the same protection.

In general, Department Deputies are discretionary appointments made by the Commissioner with the approval of the Secretary of the Agency of Human Services.[81] Shea and Walcott, however, were appointed to the Family Services Division of the Department.

In contrast to an ordinary Deputy, these division deputies—like the Commissioner—are statutorily mandatory appointments made by the Secretary with the approval of the Governor.[82] Thus, not only because they are appointed to these separate Divisions within the Department, but also because the nature of their appointments—Shea and Walcott are also entitled to absolute

[80] 33 V.S.A. § 104(c) ("The Department for Children and Families, in cooperation with the Department of Corrections, shall have the responsibility to administer a comprehensive program for youthful offenders and children who commit delinquent acts, including utilization of probation services; of a range of community-based and other treatment, training, and rehabilitation programs; and of secure detention and treatment programs when necessary in the interests of public safety, designed with the objective of preparing those children to live in their communities as productive and mature adults.").

[81] 3 V.S.A. § 3053 ("The commissioner may, with the approval of the Secretary…(6) Appoint a deputy commissioner.").

[82] *Id.*, § 3051(c) ("For the Department for Children and Families, the Secretary, with the approval of the Governor, shall appoint deputy commissioners for the following divisions of the Department: (1) Economic Services; (2) Child Development; (3) Family Services.").

immunity.[83]

B. Plaintiffs have failed to plead vicarious liability.

Additionally with respect to Counts 10 & 11, and irrespective of immunity, Plaintiffs have failed to plead any theory of vicarious liability.

As with the alleged constitutional violations, the Officials did not take part in any act that would give rise to claims for assault and battery or intentional infliction of emotional harm. Thus, Plaintiffs must plead some form of vicarious liability that would allow the Court to hold the Officials liable for the acts of others. But since Plaintiffs have not plead how the Officials are liable for the alleged assault and battery and intentional inflectional infliction of emotional distress, these claims fail.

C. Qualified immunity and Vermont's Tort Claims Act shield the Officials.

Qualified immunity protects lower-level government employees from tort liability when they perform discretionary acts in good faith during the course of their employment and within the scope of their authority.[84] In applying qualified immunity to state law tort claims, Vermont Courts use the federal objective good-faith standard.[85] This standard is used to prevent exposing state employees to the distraction and expense in defending themselves in the courtroom.[86] Under the standard, if an official's conduct does not violate clearly established rights of which a

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[83] *See e.g. Harlow v. State Dept. Human Srvcs*., 883 N.W.2d 561, 572-73 (Minn. 2016) (holding that Deputy commissioner of Department of Human Services functions as a top-level cabinet-equivalent official and is entitled to the protection of absolute immunity from defamation claims when making statements within the scope of his or her statutory authority); *Montgomery v. City of Philadelphia*, 392 Pa. 178, 188, 140 A.2d 100, 105 (Penn. 1958) (ruling that Deputy Commissioner of Public Property and City Architect are high public officials entitled to absolute immunity);

[84] *Levisnky*, 151 Vt. 178, 185, 559 A.2d 1073, 1078 (citing *Libercent v. Aldrich*, 149 VT, 76, 81, 539 A.2d 981, 984 (1987)).

[85] *Id*., 151 Vt. at 190, 559 A.2d at 1081.

[86] *Sprague v. Nally*, 2005 VT 85, ¶ 4, 178 Vt. 222.

reasonable person would have known, the official is protected by qualified immunity.[87]

Presently, Plaintiffs have not plead what acts the Officials took that gave rise to their common-law tort claims. Instead, as with the majority of their claims against them, Plaintiffs appear to hold the Officials liable by virtue of their supervisory roles.

As noted above, per 33 V.S.A. § 104 the Department is responsible for administering secure detention programs for youthful offenders. The Commissioner in turn: is responsible for administering the Department, 3 V.S.A. § 3052; has the power to appoint deputies, § 3052; and can delegate his duties, 33 V.S.A. § 105. Thus, the Officials were in the course of their employment and within their scope of authority for purposes of Plaintiffs' common-law tort claims.

As for whether the Officials were performing discretionary acts, under 33 V.S.A. § 104(b)(9), the Department "may…supervise and control children under its care and custody and provide for their care, maintenance, and education." Given that Plaintiffs' claims revolve around their alleged treatment, the Officials were also performing discretionary acts.

Turning to the final component, good faith, for the same reasons the Officials' professional judgment protects them on the Fourteenth Amendment Due Process claims, the Officials are protected here. As discussed above, the complaint and its incorporated facts show that when the Officials were made aware of alleged issues at Woodside via the RLSIU reports, they responded and took action to address the concerns.[88] Thus, it cannot be said that the Officials violated clearly established rights. Instead, the record reflects that the Officials

[87] *Id.*, 151 Vt. at 190, 559 A.2d at 1081-82 (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 102 S.Ct. 2727 (1982)).

[88] *See* Ex. A, Ltr. frm. DCF Defs. Schatz & Shea to RLSIU & Attachment, Nov. 16, 2018. *See also* Ex. C, 2016-2017 Lic. at p. 14.

discharged their statutory duty to administer a secure detention program as well as their discretionary duty to supervise and control children under the Department's care. And so, the Officials are shielded from liability by qualified immunity.

Finally, even if the Officials' response did not meet the good-faith standard, Plaintiffs' have failed to plead how the Officials were grossly negligent.

Gross negligence is negligence that is more than an error of judgment.[89] Rather, it is a failure to exercise even a slight degree of care owed to another.[90] In general, assessing gross negligence is a question of fact for the jury.[91] But where reasonable minds cannot differ, the court may dismiss the claim.[92]

In this case, as noted above, the Officials received licenses to operate Woodside from the RLSIU. These licenses covered the same aspects of confinement, restraint, seclusion, etc. that are at issue in this matter. Meanwhile the RLSIU is the same organization whose reports the Plaintiffs rely on for establishing the Officials' alleged gross negligence. As a result, it cannot be said that the Officials were grossly negligent, given that the same oversight authority that authored the reports on which Plaintiffs rely to support their claims—previously saw fit to license the facility.

Furthermore, as discussed above, the Officials were not personally involved in the complained of acts. The only active participation that the Plaintiffs can point to, therefore, is how the Officials responded to the RSLIU reports.

The Officials responded by submitting a letter outlining the issues facing Woodside as a

[89] *Kennery v. State*, 2011 VT 121, ¶ 41, 191 Vt. 44, 64, 38 A.3d 35, 47.

[90] *Id.*

[91] *Id.*

[92] *Id.*

whole, in addition to the 11-page spreadsheet responding to each claim and where needed to identifying areas for change, reevaluation, etc,[93] A response of this thoroughness does not show the failure to exercise even a slight degree of care owed. And thus, it cannot be said that the Officials were grossly negligent.

5. Plaintiffs have failed to state a claim § 1985 conspiracy.

At Counts 1, 2, 3, and 8, respectively, Plaintiffs contend that the Defendants conspired to violate the Eighth Amendment ban on cruel and unusual punishment, the Eighth and Fourteenth Amendments' ban on the use of excessive force, the Fourteenth Amendment's Due Process protections, and the First Amendment's right to petition the government to redress grievances, all in violation of 42 U.S.C. § 1985.

But § 1985 addresses itself however only with conspiracies to deny equal protection.[94] The statute is aimed at discrimination between classes, such as racial bias, national origin, or religion.[95] At a minimum, there needs to be some racial or otherwise class-based, invidiously

[93] *See* Ex. A, Ltr. frm. DCF Defs. Schatz & Shea to RLSIU & Attachment, Nov. 16, 2018.

[94] *Perrotta v. Irizarry*, 430 F. Supp. 1274, 1278 (S.D.N.Y. 1977). *See also* 42 U.S.C. § 1985(3) ("If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.").

[95] *Id.*

discriminatory animus behind the conspirator's actions.[96]

Here, Plaintiffs have failed to plead any invidiously discriminatory animus or otherwise show that they are part of a protected class.

Furthermore, even if Plaintiffs had included some sort of racial animus claim, Plaintiffs have plead only conclusory allegations of conspiracy. Per the U.S. Supreme Court, a § 1985 complaint must satisfy a four-part test.[97] This test includes a showing that the defendants did conspire or go in disguise on the highway or on the premises of another for purposes of furthering the conspiracy.[98] Presently, Plaintiffs do not even come close to satisfying this test. Other than invoking § 1985 and using the word "conspiracy," Plaintiffs' complaint is devoid of anything that would show a conspiracy occurred.

6. The Eighth Amendment does not apply to Plaintiffs.

Counts 1, 2, 4, 5, and 7 of Plaintiffs' complaint invoke the Eighth Amendment's protections. The Eighth Amendment, however, applies only to those convicted of a crime.[99] Per former 33 V.S.A. § 5801, Woodside accepted adolescents who have been adjudicated or charged with a delinquency or criminal act.[100] By law, an adjudication of delinquency is not a criminal conviction.[101] And juvenile proceedings are non-criminal in nature.[102]

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[96] *Griffin v. Breckenridge*, 403 U.S. 88, 102, 91 S.Ct. 1790, 1798 (1971).

[97] *Griffin*, 403 U.S. at 102-03, 91 S.Ct. at 1798-99.

[98] *Id*.

[99] *See e.g. Ingraham v. Wright*, 430 U.S. 651, 664, 87 S.Ct. 1401, 1408-09 (1977) (noting that Eighth Amendement's "proscription against cruel and unusual punishment confirms that it was designed to protect those convicted of crimes").

[100] 33 V.S.A. §5801 (eff. Jul. 1, 2018 to Jun. 30, 2021).

[101] 33 V.S.A. § 5202(a)(1)(A) ("(a)(1) An order of the Family Division of the Superior Court in proceedings under this chapter shall not: (A) be deemed a conviction of crime").

[102] *Northern Sec. Ins. Co. v. Perron*, 172 Vt. 204, 225-26, 777 A.2d 151, 166-67 (2001) ("Under Vermont law, a juvenile delinquency adjudication is not a violation of penal law. *See* 33 V.S.A. §§ 5535(a) ("[a]n order of the juvenile court in proceedings under this chapter shall not be deemed a conviction of crime");

In this case, all the Plaintiffs were placed at Woodside by adjudication of delinquency or juvenile proceeding.[103] As a result, detained juveniles are protected by the Fourteenth and not the Eighth Amendment.[104]

Counts 1 and 4 of the Plaintiffs' complaint should be dismissed in whole, since they rely on the Eighth Amendment alone. While Counts 2, 5, and 7 should be limited to the extent that they assert other applicable constitutional rights.

7. Under 14 V.S.A. § 1452, the Estate of G.W.'s claims did not survive G.W.'s death.

Per Vermont's survival statute, 14 V.S.A. § 1452, "in an action for the recovery of damages for a bodily injury…if either party dies during the *pendency* of the action, the action shall survive…."[105]

'Pendency' is not defined by the statute. But it's meaning can be discerned from common sources. Per *Black's Law Dictionary*, 'pendency' is defined as "the quality, state, or condition of

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5501(a)(2) (purpose of juvenile proceedings is "to remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior and to provide a program of treatment, training, and rehabilitation consistent with the protection of the public interest"); *In re R.S.*, 143 Vt. 565, 571, 469 A.2d 751, 755 (1983) ("[p]roceedings under the Juvenile Procedure Act are protective, not penal"); *In re Rich*, 125 Vt. 373, 375, 216 A.2d 266, 267–68 (1966) (juvenile proceeding "is a protective proceeding entirely concerned with the welfare of the child, and is not punitive.... The inquiry relates to proper custody for the child, not his guilt or innocence as a criminal offender."); *In re Hook*, 95 Vt. 497, 499, 115 A. 730, 731 (1922) (juvenile proceeding "is not penal, but protective").").

[103] *In Re: AL*, Nos. 104-3-17, 347-9-17, 353-9-17 Cnjv; *In Re: BC*, Nos. 48-7-13 Osjv, 56-9-16 Osjv; *In Re: DH*, Nos. 290-8-17 Cnjv, 58-10-18 Oejv; *In Re: GW*, No. 222-5-19 Cnjv; *In Re: RH*, No. 114-4-18 Frjv; *In Re: TF*, No. 10-1-17 Cajv; *In Re: TW*, No. 29-2-18 Rdjv.

[104] *See e.g. J.S.X. Through D.S.X. v. Foxhoven*, 361 F. Supp. 3d 822, 830-32 (S.D. Iowa 2019) (holding that protections of Fourteenth Amendment due process clause, rather than of Eighth Amendment, applied to claims by students at Iowa institution for male juveniles who had been adjudicated delinquent, which alleged unconstitutional and illegal treatment practices with respect to students with significant mental illness; Iowa law expressly ascribed a non-penal, non-criminal nature to juvenile delinquency adjudications and dispositions).

[105] Additionally, Vermont also has a tolling statute at 12 V.S.A. § 557, governing how long after the death of a person a suit may be brought by their estate. But this tolling provision is contingent upon "if the cause of action survives." And whether a cause of action survives death is controlled by § 1452 above.

being pending or continuing undecided."[106] Meanwhile, *Merriam-Webster* provides that 'pendency' is "state of being pending / the pendency of the litigation."[107]

In this case, per the Complaint, G.W. died of a drug overdose in October 2021. The Complaint was not filed, however, until December 13, 2021.

Thus, G.W. did not die during the pendency of this action. Or, in other words, her claims and the present suit were not pending at the time of her death. And as a result, per § 1452, G.W.'s claims did not survive her death and cannot be asserted by her Estate in this matter.

Conclusion

In sum, the majority of the Plaintiffs' claims against Defendant Department of Children and Families Officials fail because the Plaintiffs' have failed to plead the Officials personal involvement in the alleged offensive acts. Furthermore, the Plaintiffs have failed to rebut the presumption that Officials used their professional judgment in implementing the various policies at Woodside that Plaintiffs contend violated their constitutional rights. And as a result, the Officials ask that the Court dismiss the claims against them.

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[106] *Pendency*, BLACK'S LAW DICTIONARY (11th ed. 2019).

[107] *Pendency*, MERRIAM-WEBSTER.COM DICTIONARY, https://www.merriam-webster.com/dictionary/pendency (last visited Apr. 19 2022).

Merriam-Webster also offers several examples, such as: "Slobodan died during pendency of the trial, while Karadzic and Mladic were convicted in 2016 and 2017 and are currently serving long sentences. — Ruti Teitel, *CNN*, 6 Apr. 2022; The charges were filed in 2018 and Porter argued the case's pendency violated McDougall's speedy trial rights. — Cory Shaffer, *cleveland*, 23 Nov. 2021; He was ultimately placed on house arrest during the pendency of the murder case, with several conditions including submitting to GPS monitoring. — *BostonGlobe.com*, 10 Aug. 2021."

DATED at Springfield, Vermont, this 25th day of April, 2022.

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EXHIBIT A

VERMONT

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Agency of Human Services

November 16, 2018

Brenda Dawson, Senior Family Services Worker
Residential Licensing and Special Investigations
Department for Children and Families
Family Services Division
280 State Drive
Waterbury, VT 05671-2401

Dear Ms. Dawson:

Please accept this response to letters (eleven in total) dated October 12, 2018 addressed to Brenda Gooley, DCF Family Services Director of Operations.

First and foremost, we want to thank you for the work that you did to respond to these licensing reports. It is clear that you take your role seriously and are interested in improving the experiences of youth at Woodside.

Attached to this letter is a spreadsheet that documents Woodside's response to the individual findings in each report. Before addressing the individual findings, we think that it is important to provide some overarching context to Woodside's response to these findings and the plan to come into compliance.

Because Woodside is a locked program providing residential treatment to extremely high needs youth with juvenile justice involvement, its program and policies have never fit squarely within the framework of the current residential treatment program rules. The residential treatment program rules attempt to address this problem by including a specific section specifically exempting secure facilities, i.e. Woodside, from certain program rules applicable to all other residential treatment programs. For example, Woodside is specifically exempt from the application of Rule 5.08, which provides: ***A Residential Treatment Program shall accept and serve only those children/youth whose needs can be met by the services provided by the program.*** Woodside is exempt from this rule as an acknowledgement that it is the only program in the state that cannot reject youth for admission. Woodside has been asked to serve all youth referred to the program, without respect to whether the youth's needs can be met by the program. Woodside has accepted that responsibility, but sometimes to its detriment. Some of the findings in these reports are a direct result of the fact that Vermont's system of care lacks all of the necessary resources to meet the needs of youth in this state.

Woodside is currently in the process of evolving. The Department has been on a path for the past two years to regain Medicaid funding for Woodside but has just recently made the decision to change course because of unpredictability of federal requirements. Now, the Department is reevaluating the purpose of Woodside and its role in Vermont's system of care. The decision to not pursue Medicaid funding for Woodside has been difficult on many levels. However, there are also some positive aspects to the decision that include a fresh look at the system of care and gaps for care. No matter the future of Woodside, it is clear that it cannot be the only program to accept the hardest to serve youth in our state.

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The number of youth served at Woodside has been trending downward. Woodside served a total of 84 individual youth (with 121 different admissions) in SFY17 and 82 in SFY18 (with 129 different admissions). Recent legislative changes that only allow courts to place youth at Woodside pre-disposition in their delinquency case have also contributed to a more recent decline since July 1, 2018. Woodside is licensed for 30 beds. The average daily population over the last year has been 20 youth as a high in September 2017 and a low average of 12 youth in September 2018. This declining population is important to consider as we decide next steps.

In evaluating Woodside's role in the future, the Department also expects to consider what framework makes the most sense for the regulation and monitoring of Woodside, both for Woodside and the Residential Licensing and Special Investigations Unit (RLSI). The Department takes full responsibility for the decision to place Woodside within the monitoring and regulation of RLSI. A decision that has not been easy for either Woodside or RLSI.

While Woodside has a number of substantive issues regarding the regulatory investigation findings, the Department is committed to undertake a number of voluntary corrective action measures to address concerns that were highlighted in the reports:

- Retaliation - Retaliation is not acceptable and we do not believe that it is a pervasive issue at Woodside. We met with both staff and youth on October 31 to hear viewpoints on a variety of issues. Youth who are living in a locked setting may view decisions by adults who work in the program as retaliatory as there is a power differential inherent in that relationship. We discussed with staff the need to be sensitive to that perception and to reinforce the message that retaliation is not acceptable. Karen Shea followed up with Woodside staff in writing to confirm these messages.

- Grievance Procedure - Woodside appreciates and values the role of the grievance process in giving youth a voice to air concerns and a process by which they may be heard. This is an important part of the program and one that helps build life skills and confidence for youth. The grievance process has been a topic at Woodside stakeholder meetings during 2018 and the process refined with respect to the appeal process to ensure that RLSI is forwarded all grievance appeals so that RLSI may review for potential regulatory violations. With respect to any findings that the Woodside Director cannot review a grievance about an incident that he or she was involved in, the grievance process allows for residents to send grievances directly to DCF central office if the grievance involves the Director. We are also interested in creating a process that has a feedback loop for youth to ensure that they know their concern has been heard.

- De-escalation - Trauma informed de-escalation strategies are an important component to the program that hopefully will result in very few to zero incidents of restraint and seclusion. Woodside is examining and re-evaluating its current de-escalation strategies as part of the review of restraint modality at Woodside.

- Restraint Approach – The use of emergency safety interventions is an area that Woodside is committed to continuously improve. To that end, in 2015, Woodside adopted a policy to require clinical orders by licensed clinical psychologists or physicians for all emergency safety interventions, including restraint and seclusion. Woodside also increased the number of staff on the floor working with youth. The result of these policy changes has been a dramatic reduction in the numbers of high-level interventions. For the first 18 months following this change in practice, the number of incidents of restraint and seclusion dropped from on average 46 per month to 18 per month. During calendar year 2017, there were on average only two incidents of restraint and seclusion per month. In 2018, so far there have been on average three incidents of restraint and five incidents of seclusion per month. There is some concern that the current Woodside policies on restraint and seclusion and compliance with these policies were not mentioned as part of the documentation reviewed by the licensing agency.

There is also some concern that Woodside has not received notice that its restraint modality is not approved by RLSI. RLSI did issue concerns in 2016 that the Woodside restraint modality included pain compliance, but RLSI subsequently found that Woodside immediately responded to that concern and modified its training and methodology appropriately. The current Woodside license finds Woodside in compliance with Regulation 650, which provides that a program "shall not use any form of restraint without prior approval of the Licensing Authority." The current Woodside license also notes with respect to compliance with Regulation 651 that "Woodside continues to demonstrate reduction of physical restraint." That being said, the modality of restraint, including the concern around pain compliance, is something that Woodside is examining and re-evaluating and will report back to stakeholders and RLSI on this topic.

- North Unit – With respect to concerns regarding Woodside's use of the North Unit, we do not have any specific corrective actions with respect to these observations until we decide the future of Woodside and its role in the system of care. Corrective action is complete with respect to plumbing issues in the North Unit.
- Supervision Documentation – Woodside will continue to work to ensure that provisional plans of care are developed and disseminated to ensure staff are aware of the plans and implementing them appropriately.
- Appropriate and available placements for actively suicidal and other high needs youth – The Department is examining the role of Woodside in the system of care. The Department plans to also engage other players in the system to evaluate the current system and needs to ensure that appropriate placements are available for youth who are self-harming and/or have other high-level mental health needs, but who may also be aggressive and assaultive. Youth presenting with these characteristics have historically been rejected by other in-state residential placements and hospitals.

With these thoughts in mind, Woodside respectfully disagrees with a number of the individual findings and conclusions drawn in the eleven reports. The basis for these disagreements differs in individual reports but can be summarized as follows:

- Failure to review policies adopted by Woodside and Woodside's compliance with these policies in the analysis of findings.
- Inappropriate acceptance of allegations as specified in court filings requesting protective orders as conclusive findings of fact without including any additional follow up regarding court findings or orders related to those filings. In fact, no court has issued a protective order.
- Concern with the inappropriate application of some particular regulations to specific set of circumstances.
- Lack of details and input from all individuals involved in specific situations to provide context for decisions made that should have been factored into the analysis.
- Lack of analysis related to the impact of individual residents and their behaviors on the overall milieu and the competing responsibility Woodside staff must deal with in managing the behaviors of individual youth while keeping programming as normal for other youth as possible.
- Lack of understanding or analysis related to the traumatic impact staff experience in these situations or the obligation of Woodside to manage the needs of the youth while supporting staff who have experienced trauma to learn and grow.
- Reliance on and comparison to practices in programs that serve youth who do not pose the degree of physical risk the youth at Woodside pose to staff.

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The attached document details Woodside's response to each finding. As you will see, there are some findings with which Woodside agrees. Thank you.

Sincerely,

Ken Schatz – on behalf of Karen Shea & myself

Ken Schatz, Commissioner, and Karen Shea, Deputy Commissioner of Family Services
for Woodside Juvenile Rehabilitation Center

cc: Jay Simons, Director, Woodside Juvenile Rehabilitation Center
Brenda Gooley, Family Services Division Director of Operations

Woodside Response to RLSI Findings
November 16, 2018

RLSI Finding						Woodside Response to Findings of Compliance with Reservation or Violation	
Date	Youth	Regulation	No Violation / Compliance	Compliance with Reservations	Violation	Commissioner's Determination	Comments
Complaint dated 12/15/2017	TF						
		635	X				No response is required.
		635		X		Woodside disagrees with this finding.	The ace bandage was not medically necessary. It was essentially a comfort object. Use of this regulation is inappropriate under the circumstances. Additionally, regarding birth control, the narrative offered in the report does not match the finding.
Incident date of 6/27/2018	TF						
		201 648 651			X X X	Woodside disagrees with the findings related to Regulations 201 and 648 based on a lack of complete and accurate information relied upon in the analysis. Woodside disagrees with findings related to regulation 651.	Woodside staff believed that their co-worker's life was in danger. Their actions in initiating a restraint under those circumstances appear aligned with licensing regulation 651. The Department has significant concerns about the findings in this report and the omissions in considering (1) other children in the facility and (2) the safety of staff in the report in any way. Additionally, there were serious omissions of information including the fact that staff who were responding to the individual resident subject in the report were afraid for the safety of a staff person that they could not assist. The report lacks any appreciation of the risk to the staff person outside, alone, with the resident who had a recent history of aggravated assault with life threatening injuries resulting and suggests that it was known to those inside the building that the youth who was thought to be alone with the staff person had escaped. That was not known to people inside the facility that were involved in the restraint of the individual subject to this report. The RLSI report creates the impression that staff moved immediately to restraint. During the emergency staff used de-escalation techniques, commands and presence to motivate TF to cooperate. When staff attempted to utilize a physical prompt, TF decided to assault the supervisor. Only after the assault did staff move to restrain TF.

RLSI Finding						Woodside Response to Findings of Compliance with Reservation or Violation	
Date	Youth	Regulation	No Violation / Compliance	Compliance with Reservations	Violation	Commissioner's Determination	Comments
							The Department takes seriously its responsibility to keep children at Woodside safe. The Department also takes seriously our role to keep Woodside staff safe as well. It must be noted that after this incident TF advised her Family Services Worker and clinicians that she purposely assaulted staff to acquire charges to ensure future Woodside placement. Notwithstanding the disagreement with these findings, Woodside is examining its de-escalation strategies and restraint modality in order to improve these practices.
Complaint dated 5/24/2018	BC						
		201 601		X	X	Woodside disagrees with the analysis offered regarding Regulation 201 and 601.	The individual youth in question was provided feminine hygiene products. Licensing regulations do not require that a program must provide the product of the youth's choosing to meet the need. Additionally, there is no indication in regulation that a youth has the right to shave a part of their body at a specific frequency or as desired. The analysis suggests that DCF Family Services Policy 75 would allow access to tampons and a razor pursuant to the Reasonable and Prudent Parent Standard (RPPS). The Department disagrees with this assertion as the policy is clear that "the standard characterized by careful and sensible parental decision that maintain the health, safety, and best interests of the child or youth in DCF custody". DCF Family Services Policy 75 is clear that these having feminine hygiene products of the youth's choice is at the discretion of the caretaker. The youth in question has a history of being acutely suicidal and has been assessed as having a high degree of lethality. Allowing access to items that could be used for self-harm (even if closely supervised) or result in a power struggle that could escalate to restraint is incongruent with the RPPS. Furthermore, regulation 601 is related to supervision. The compliance with reservation presumes that the program must provide feminine hygiene products of the youth's choice.
		613	X				No response required.
		626	X				No response required.
Incident dated 6/12/2018	BC						

RLSI Finding						Woodside Response to Findings of Compliance with Reservation or Violation	
Date	Youth	Regulation	No Violation / Compliance	Compliance with Reservations	Violation	Commissioner's Determination	Comments
		601			X	Woodside disagrees with the analysis offered regarding Regulation 601.	Woodside increased supervision based on a call of concern from the youth's attorney, which lacked any specific details about the risk. The degree of supervision of the youth resulted in the intervention occurring.
		635			X	Woodside agrees with the finding related to Regulation 635.	At the time of the incident, it was unclear if youth should be transported for medical clearance. On 5/18/18 Dr. Steward was advised by First Call that acutely suicidal residents who have been EE'd from Woodside should remain at Woodside until an appropriate bed becomes available. The analysis offered in the licensing report that the memo from Melanie D'Amico dated 5/29/2018 was applicable to Woodside is incorrect. It was not the expectation of DCF Family Services leadership that this memo be controlling for Woodside. This confusion has since been clarified and youth will be transported for medical clearance following an attempt to complete suicide if medical clearance cannot occur at Woodside.
Incident dated 8/25/2018	BC						
		650			X	Woodside disagrees with the finding regarding regulation 650.	RLSI has issued no prior notice to Woodside indicating that the restraint model is no longer approved. The current Woodside license finds Woodside in compliance with Regulation 650. Notwithstanding the disagreement with these findings, Woodside is examining its de-escalation strategies and restraint modality in order to improve these practices.
		201 651 718			X X X	Woodside disputes the finding in Regulations 201, 651 and 718 stating that there was no justification for the removal of clothing.	Woodside strongly disagrees with the findings considering the assessments provided by both UVMMC and the Brattleboro Retreat that safety focused treatment was essential for this youth. Woodside has significant concerns about the findings in this report and the omissions in considering the circumstances that resulted in this youth being at Woodside. This youth was screened and determined in need of involuntary psychiatric treatment due to being acutely suicidal. This youth has a history of repeated attempts at suicide while in settings generally considered safe - hospitals, Woodside. The report references several things that were done in the interest of keeping this youth alive in a way that lacks appreciation for the degree of lethality posed by this youth as documented by medical professionals at both UVMMC and at the Brattleboro Retreat.

RLSI Finding						Woodside Response to Findings of Compliance with Reservation or Violation	
Date	Youth	Regulation	No Violation / Compliance	Compliance with Reservations	Violation	Commissioner's Determination	Comments
		648			X	Woodside disputes the finding of a violation for Regulation 648.	As stated above, Woodside disputes the finding that there was no justification for the removal of items with which the youth could use to harm herself. In addition to examining its current restraint model and de-escalation strategies, the Department is also examining system of care needs for youth who may not be appropriate for Woodside.
		601 660			X X	Woodside disputes the finding of a violation for Regulations 601 and 660.	Woodside maintains that supervision of BC was conducted in accordance with 601 and 660. It is also important to note that Woodside strongly disagrees with and takes offense to the statement in the licensing report that states that the video footage is concerning "because, whether due to its quality or actuality, it appears to be spliced or to have breaks in footage." Woodside does not splice or in any way tamper with video footage. Woodside respectfully requests that this statement is retracted.
Complaint dated 9/20/2017	CM						
		201	X				No response required.
Complaint dated 10/30/2017	CM						
		651		X		Woodside disputes the finding of compliance with reservations for Regulation 651	Regulation 651 is not applicable to transports from Woodside. This regulation is applicable to emergency safety interventions. In addition, as a secure facility, Woodside is exempt from prohibitions on mechanical restraint under the "Exemptions and Additional Regulations for Secure Facilities" on page 42. Regulation 905 addresses the use of mechanical restraints at secure facilities during transportation. Woodside disagrees that there is a presumption that youth must be transported with restraints. Woodside Policy 518 Transportation states, "Prior to departure the team responsible for the youth shall decide on the type of security necessary to safely transport the youth, taking into account the risk the youth presents. If the team decides the youth should be transported with restraints, the team will decide if leg restraints alone are sufficient or if additional restraints are required." Paragraph f. of Woodside policy states, "Transportation for most youth in the Treatment Program will generally be considered "non-secure" and will be provided by one or

RLSI Finding						Woodside Response to Findings of Compliance with Reservation or Violation	
Date	Youth	Regulation	No Violation / Compliance	Compliance with Reservations	Violation	Commissioner's Determination	Comments
							two staff without any restraints..." In addition, the Woodside Transportation Policy regularly references DCF/FSD Policy 150. CM did require mechanical restraint per policy 150. He met criteria under form 653. A review of Woodside transports showed that most Woodside residents are transported "non-securely."
Complaint dated 5/29/2018	TW						
		201			X	Woodside disagrees with the findings regarding Regulation 201.	Specifically, the analysis in the findings offered indicates that "it is not common practice among other Residential Treatment Programs to have the Director of the program involved in restraints. Youth must grieve to the person who possibly restrained them". There is nothing specific in Regulation 201 that prohibits Director involvement in significant incidents including restraints. It is also not feasible to assume that the Director would never be involved in any program response or activity that could give rise to a grievance. The grievance process allows for residents to send grievances directly to DCF central office if the grievance involves the director. Additionally, there is no other RTP in the state of Vermont that serves this population so the comparison to other RTP is problematic as it underestimates the risk posed to staff and the need for the expertise of the Director to be brought to bear in certain situations. Woodside disagrees that there are examples of restraints that were not warranted. However, the Department will voluntarily be working to explore available restraint and de-escalation approaches that could be implemented at Woodside. Woodside has addressed toileting concerns through the installation of a remote flushing device for each NU room.
		520		X		Woodside disagrees with the conclusion rendered regarding Regulation 520.	The analysis points toward direct evidence of Provisional Plans of Care and then states that there is concern that plans are not disseminated without providing evidence to support this concern. Woodside will continue to work to ensure that PPCs are developed and disseminated to ensure staff are aware of the plans and implementing them appropriately.
		609		X		Woodside disagrees with the finding of compliance with reservation for Regulation 609.	The report states that the provisional plan of care demonstrates that the youth was offered educational activities. The finding states that the Agency of Education contact has been the issue of concern. The Department has no authority over the Agency of Education and holding Woodside accountable for this issue is inappropriate.
		635	X				No response required.

RLSI Finding						Woodside Response to Findings of Compliance with Reservation or Violation	
Date	Youth	Regulation	No Violation / Compliance	Compliance with Reservations	Violation	Commissioner's Determination	Comments
		648			X	Woodside disagrees with the analysis offered regarding Regulation 648.	Woodside disputes that the current restraint techniques are used to induce pain to gain compliance. However, as stated previously, the Department will voluntarily explore available restraint and de-escalation approaches that could be implemented at Woodside.
		650			X	Woodside disagrees with this finding.	RLSI has issued no prior notice to Woodside indicating that the restraint model is no longer approved. The current Woodside license finds Woodside in compliance with Regulation 650. Notwithstanding the disagreement with this finding, Woodside is examining its de-escalation strategies and restraint modality in order to improve these practices.
		651 654		X	X	Woodside disputes the findings of violations for Regulations 651 and 654.	Woodside uses restraint as a last resort and Woodside followed its policy on this topic. The report states that there was no evidence that restraint of this youth was used for coercion, retaliation, humiliation, punishment or staff convenience. The violation is not supported by the findings. Notwithstanding the disagreement with this finding, Woodside is examining its de-escalation strategies and restraint modality in order to improve these practices.
		660			X	Woodside disputes the violation of Regulation 660.	The report indicates that TW was secluded at this time when in fact the daily log book is clear that TW was refusing time with staff and was self-isolating, and therefore was not secluded. The definition of Seclusion in the RLSI regulations manual states that "Voluntary time-out is not considered seclusion." TW could have been with staff had she indicated that she wanted that when the multiple offers were made that morning. In addition, the reports sites an entry where TW is resistant to entering her room at quiet time. Quiet time is a long-standing program component at Woodside where all residents are in their rooms awaiting showers, phone calls etc. and is not seclusion. There is also concern regarding statements on page 5 in the third paragraph of this report. The report indicates that the daily log book shows that TW had stated that she will commit suicide by starvation and will be dead within two days. The report author states that she doesn't understand the rational for not having a First Call screening. This is concerning on two levels. 1. A threat to commit suicide by not eating is not an imminent threat, and 2. The daily log clearly shows that TW eats bacon and hash browns within the next few minutes. Describing the suicidal comments cited in the daily log book without mentioning the very next entry is taking the situation out of context and is misleading.

RLSI Finding						Woodside Response to Findings of Compliance with Reservation or Violation	
Date	Youth	Regulation	No Violation / Compliance	Compliance with Reservations	Violation	Commissioner's Determination	Comments
Complaints dated 7/5/2018 and 8/3/2018	AA						
		201 423 621 630	X		 X X X	Woodside agrees that efforts made to address the youth's religious practices were insufficient.	No response is required. Woodside agrees to address the issue through on-going training and consultation with The Association of Africans Living in Vermont and the Refugee Resettlement Program. Woodside will also develop policy and procedure to guide staff in the service of alternative diets.
Complaint dated 7/5/2018	RH						
		201			X	Woodside disagrees with the conclusion rendered regarding Regulation 201 and retaliation.	The RLSI report highlights a Motion for Protective Order filed by the Juvenile Defender's office. The motion went before the court and no such order was issued. In addition, RH requested that the motion be withdrawn. When the Juvenile Defender attorney did not follow his wishes, RH wrote a hand-written letter to her supervisor requesting that he intervene and withdraw the motion. The report attributes RH's body language and behavior during the interview with RLSI staff as evidence that he is being retaliated against. RH demonstrates low level paranoia across all domains of his life as evidenced by Woodside staff observations, staff from prior placement observations and interviews with his foster parents. The RLSI report relies on the "Office of the Juvenile Defender **intern's** report" as evidence that RH was secluded excessively. The RLSI report does not explain the intern's expertise nor the evidence that the intern used to make the determination. The Juvenile Defender's report had not been validated as fact.

RLSI Finding						Woodside Response to Findings of Compliance with Reservation or Violation	
Date	Youth	Regulation	No Violation / Compliance	Compliance with Reservations	Violation	Commissioner's Determination	Comments
							While the RLSI gave weight to RH's affect during the interview, RLSI neglected to interview staff to assess affect and/or add weight to their perspective.
		201			X	Woodside agrees with the finding related to the toilets in the NU not being flushed regularly enough.	To address the North Unit toilet flushing issue Woodside installed an updated computer-controlled system. The system malfunctioned resulting in unsanitary conditions. The system was repaired as quickly as possible.
		520			X	Woodside disagrees with the conclusion rendered regarding Regulation 520.	The analysis points toward direct evidence of Provisional Plans of Care and then states that there is concern that interventions in the PPC are not being documented in staff reports. The specific intervention mentioned in this licensing report is providing "time and space." The reporter states that since time and space were not afforded RH the reporter concluded that the staff did not follow the PPC. This conclusion fails to recognize that RH was afforded "time and space" and was left with his favorite staff member after refusing to re-enter his unit. While taking time and space he continued to escalate up to and including assaulting the staff member with a table. According to staff reports and the video footage upon entering the conference room staff did not close the distance with RH leaving him with space and time. ADO Cathcart walked away from RH and went to the NU door. Once there he afforded RH the option of entering the NU on his own. RH responded by taking a fight stance and throwing a chair at staff. He was not able to de-escalate himself after multiple opportunities to use time and space. Woodside will continue to work to ensure that PPCs are developed and disseminated to ensure staff are aware of the plans and implementing them appropriately. The report lacks any appreciation of the risk to the staff person alone with resident RH and suggests that it was the staff person's fault that RH rammed a table into him multiple times. The staff positioned himself to prevent RH using the table to destroy the conference room door (an essential piece of equipment). RH also has a history of weaponizing broken items. Had he smashed the table into pieces he would have had multiple deadly weapons available to him

RLSI Finding						Woodside Response to Findings of Compliance with Reservation or Violation	
Date	Youth	Regulation	No Violation / Compliance	Compliance with Reservations	Violation	Commissioner's Determination	Comments
							increasing the level of dangerousness for all involved. Staff use their presence regularly to prevent residents from destroying property to weaponize.
		609	X				No response required.
		614		X		Woodside disagrees with the conclusion rendered regarding Regulation 614.	The report failed to show that RH was restricted from telephoning his parent(s), custodian, attorney etc. To the contrary the report identifies that residents can contact people outside the facility when the residents are safe. Woodside records show regular and consistent contact between RH and his attorney despite regular and consistent dysregulation and dangerousness on RH's part. The compliance with reservation creates the impression that residents have a right to contact their attorney when actively dangerous.
		648			X	Woodside disagrees with the conclusion rendered regarding Regulation 648.	Woodside disputes that the current restraint techniques are used to induce pain to gain compliance. The report references several things that were done in the interest of keeping this youth alive in a way that lacks appreciation for the degree of lethality that is involved in situations when a resident is strangling and secreting themselves from staff. RH had been observed using his T shirt to strangle himself and had acquired towels to cover his window to prevent staff from seeing him while strangling. Regarding the toilet in RH's room not being flushed the report fails to state that the water had been shut off due to RH flooding his room and attempting to contaminate staff with soiled water from his toilet. The towels were in place to keep the dirty toilet water from getting on staff as they checked on RH. Had RH been safe his toilet would have been flushed as the water would have been turned on. Woodside does recognize that the old flush system was not adequate to serve residents at this level of care. Woodside has replaced the system with an upgrade that allows toilets to be flushed regardless of resident behavior. As stated previously, the Department will voluntarily explore available restraint and de-escalation approaches that could be implemented at Woodside.
		650			X	Woodside disagrees with this finding.	RLSI has issued no prior notice to Woodside indicating that the restraint model is no longer approved. The current Woodside license finds Woodside in compliance with Regulation 650.

RLSI Finding						Woodside Response to Findings of Compliance with Reservation or Violation	
Date	Youth	Regulation	No Violation / Compliance	Compliance with Reservations	Violation	Commissioner's Determination	Comments
							Notwithstanding the disagreement with this finding, Woodside is examining its de-escalation strategies and restraint modality in order to improve these practices.
		651			X	Woodside disputes the finding related to violations of regulation 651.	Woodside maintains that restraint is always used as a last resort and Woodside followed its policy on this topic. The Woodside incident report describes staff intervening in destructive behaviors by using time and space, time with RH's favorite staff person, communication techniques, choices and directions. When time and space and less restrictive interventions are not successful to prevent escalation staff presence is employed. RH continued to escalate, and staff are assaulted. Staff continue to persist with low level interventions until yet more staff are assaulted. The RLSI staff mistakenly characterize these assaults as the Woodside staff member's responsibility.
		654			X	Woodside disagrees with the conclusion rendered regarding Regulation 654.	The RLSI report states that property damage has been listed on incident reports as reasons for restraint yet provides no examples. The report creates the impression that restraint is used to protect property versus protecting the resident(s) and others from weapons made from destroyed property. The RLSI report continues by stating that the 4/18/18 incident where resident RH was strangling himself with his t shirt and was covering his windows with towels did not involve imminent risk. The department disagrees with this assessment. It is also worthy of noting that the incident took place in the very early morning hours and was triggering to other residents who suffer from significant trauma. RH's verbal threats of violence are triggering and re-traumatizing to other residents in the unit.
		660			X	Woodside disagrees with the conclusion rendered regarding Regulation 660.	The RLSI report describes the author observing residents in locked rooms in the North Unit without staff constantly observing them. The RLSI report does not state that these residents were secluded during this time. Residents in the North Unit are provided the choice of being one on one with staff or remaining in their rooms. When residents choose to remain in their rooms they are not secluded, and constant observation is not required. Page 49 of the RLSI regulations states that voluntary time-out is not considered seclusion.
		661	X				No response needed.

RLSI Finding						Woodside Response to Findings of Compliance with Reservation or Violation	
Date	Youth	Regulation	No Violation / Compliance	Compliance with Reservations	Violation	Commissioner's Determination	Comments
		701			X	Woodside agrees with the finding related to Regulation 701.	To address the North Unit toilet flushing issue Woodside installed an updated computer-controlled system. The system malfunctioned resulting in unsanitary conditions. The system was repaired as quickly as possible.
		718			X	Woodside agrees with the finding related to Regulation 718.	Woodside has had incidents where multiple residents require seclusion to prevent imminent harm. Woodside has one safe room. In such circumstances resident rooms are stripped of items that the resident is using in dangerous ways and the resident is left in place. This practice is also used to avoid restraint when a resident is using an item(s) in dangerous ways and moving the resident into a safer space will require restraint. The department is reviewing this practice and solutions to prevent future violations.
Undated	ALL						
		401	X				No response needed.
		411	X				No response needed.

EXHIBIT B

VERMONT

State of Vermont
Department for Children and Families
Family Services Division
103 S. Main Street
Waterbury, VT 05671-2401

October 12, 2015

Jay Simons, Director
Woodside Juvenile Rehabilitation Center
26 Woodside Drive
Colchester, Vermont 05446

Dear Mr. Simons,

Please find enclosed the license and licensing report reflecting the May 2015 site visits. Please note the license is effective August 1, 2015 and expires July 30, 2016.

If you have any questions, please feel free to give me a call.

Sincerely,

Christopher Ward, LICSW, Social Worker
Residential Licensing & Special Investigations

Brenda Dawson Crocket

Brenda Dawson Crocket, MSW, Senior Social Worker
Residential Licensing & Special Investigations

Enclosure

C: Ken Schatz, Commissioner, Department for Children & Families via email
Leslie Wisdom, General Counsel, Department for Children & Families via email
Karen Shea, Child Protection & Field Operations Director, DCF via e-mail
Marion Paris, Residential Services Manager, DCF via e-mail
Melanie D'Amico, Child Placement Specialist, DCF via e-mail
Janet Dunigan, Child Placement Specialist, DCF via e-mail
Alicia Hanrahan, Education Programs Manager, Agency of Education, via e-mail
Pat Pallas-Gray, Independent Schools Consultant, Agency of Education, via email
Laurel Omland, Department of Mental Health via e-mail
RLSI-electronic file

State of Vermont

AGENCY OF HUMAN SERVICES
DEPARTMENT FOR CHILDREN & FAMILIES

License to Operate a Residential Treatment Program

Granted to

Woodside Juvenile Rehabilitation Center
26 Woodside Drive
Colchester, Vermont 05446

in accordance with Title 33, Vermont Statutes Annotated, as amended, Section 2851.

TERMS OF THE LICENSE

MAXIMUM NUMBER OF CHILDREN: 30 youth, male & female
10 – up to 18 years of age

CONDITIONS: The conditions include the following summarized corrective actions.

Woodside will:

- Report and consult licensing authority regarding program changes.
- Hold Treatment Team Meetings quarterly.
- Initiate restraint as a last resort.
- Youth restricted to rooms will be considered in seclusion and program must adhere to applicable regulations
- Develop policy regarding purpose and procedures governing the ISU.
- Request a variance to regulation prohibiting use of mechanical restraints inside the facility.

The Governing Authority will:

- Pursue adoption of PRTF conforming rules to govern the future regulation of Woodside.

This license is granted in consideration of the application thereof, and said application and all statements, information, answers, promises and agreements therein contained are hereby referred to and made a part hereof.

Commissioner, Ken Schatz

Effective: August 1, 2015
Expires: July 30, 2016

UNLESS SOONER REVOKED OR SUSPENDED

RESIDENTIAL TREATMENT PROGRAM
Licensing Report

	Woodside Juvenile Rehabilitation Center	Original:	
Address:	26 Woodside Drive	First Relicense:	
	Colchester, Vermont 05446	Renewal:	X
Telephone:	(802) 655-4990		
		Licensed Capacity:	30
		Gender:	Male & Female
Date(s) of Site Visit:	5/9/15, 5/11/15, 5/18/15, 5/19/15, 5/21/15	Age:	10 up to 18
Licensor(s):	Brenda Dawson, MSW and Chris Ward, LICSW		

Methodology

Review:	Review:	Interview:
X Application Documents	X Program Description	X Children/Youth
Fire Safety Inspection documents	X Program Policies & Procedures	X Parents
Minutes of Board Meetings	X Organizational Chart	X Direct Care Staff
X Communication logs	X Staff Roster/files/background Checks	X Supervisory Staff
Medication logs	X Staff Schedules	X Clinicians
Evacuation drill logs	X Staff Training Records/Supervision	X Administrators
X Secretary of State Website	X Client files	X Collateral agencies/departments
		X Inspect physical facility(ies)

PROGRAM SUMMARY: According to Woodside's program description "*Woodside Juvenile Rehabilitation Center is a secure residential treatment facility located in the Town of Essex in the State of Vermont. Operation of the facility is the responsibility of the Agency of Human Services (AHS), Department for Children and Families (DCF), Family Services Division (FSD).*

The goal of Woodside is to provide evidence-based practices using strength-based, goal-directed, and resident-led treatment in a safe and secure environment. It is the highest level of care in the state for youths adjudicated or pre-adjudicated delinquents, whose needs for supervision cannot be adequately addressed in the community.

Woodside incorporates a consistent treatment milieu essentially offering residents constant therapeutic services, staff accessibility, and the opportunity for social learning. Combined with this therapeutic milieu, evidenced-based therapy and assessment services are employed through individual and group delivery. To strengthen the opportunity for resident to be successful upon transition, Woodside is closely linked to the surrounding community through expert consultation, re-engagement programming and activities, treatment provider linkage, and volunteering.

The Green and Blue Units contain 12 and 14 (respectively) single occupancy resident rooms surrounding an open living day room. There are two bathrooms with showers available for resident use on each unit. The staff office walls are primarily safety glass to increase supervision.

The Intensive Stabilization Unit is comprised of three self-contained single occupancy rooms that have toilets and sinks within the room, and one padded safe room. These rooms are connected to a dayroom. The unit is equipped with shatterproof safety-glass windows, shatterproof lights and steel door for security purposes. All door locks can be electronically or manually controlled."

Information supporting this report and its conclusions was gathered by two Residential Licensing and Special Investigations social workers. On site interviews and document reviews were conducted over the course of 5 days. Significant additional time was spent conducting off site interviews on the telephone and in person.

Those interviewed included the Director, Assistant Operations Director, Quality Assurance Administrator, Clinical Director, Educational Coordinator, all three Operations Supervisors, all three Clinicians, Contracted Psychiatrist, Contracted Psychologist, eight Youth Counselors, four Teachers, a Cook, Financial Specialist, and two former employees. A majority of individuals interviewed requested anonymity.

Six current residents and two former residents were interviewed. RLSI asked Woodside to provide the name of social workers who have placed youth at Woodside during the last year. RLSI solicited feedback from 21 social worker and supervisors by email. No written responses were received. Two supervisors and six social workers spoke in person on condition of anonymity.

Five parents who are active in their child's treatment and the DCF Family Placement Specialist were contacted by telephone.

Additional comments are found at the conclusion of this report for specific and noted regulations.

On June 19, 2015 RLSI provided an initial licensing report draft for program response. On July22, 2015 we received the Woodside response. This final report is resultant of this exchange.

REGULATORY OVERSIGHT

	Compliance	Recommendations/Comments
101 A Residential Treatment Program shall not be operated without the formal prior approval of the Department for Children and Families, Residential Licensing Unit (hereafter "Licensing Authority").	C	Detention Unit opened in Colchester in 1986 and Treatment Unit in 1987.
102 A program, which was already operational before the need for a license was determined, may be considered to be in compliance if the program has applied for and is making satisfactory progress toward licensure.	C	Current licensing period with no lapse began 1996
103 A Residential Treatment Program shall allow the Licensing Authority to inspect all aspects of a program's operation which may impact children/youth.	C	RLSI has found Woodside Administration and staff to be open and accommodating during licensing activities and investigations.
104 A Residential Treatment Program shall allow the Licensing Authority to interview any employee of the program and any child/youth in the care of the Residential Treatment Program.	C	
105 These regulations are not meant to supersede State or Federal mandates.	C	
PROCEDURES		
106 An applicant shall apply for a license on a form provided by the Licensing Authority and provide requested information.	C	
107 When a Residential Treatment Program has made timely and sufficient application for licensing renewal, the existing license does not expire until the application for renewal has been acted upon by the department.	C	Signed application received on 06/01/2015
108 A license may be issued with conditions when regulations have not been met, provided that the non-compliance does not constitute an unsafe situation or a major programmatic weakness and the program acts immediately to address the identified non-compliance.	C	
VARIANCE		
112 A Residential Treatment Program shall comply with all applicable regulations unless a variance for a specific regulation(s) has been granted through a prior written agreement with the Licensing Authority.	C	

113 A variance for specific regulation(s) shall be granted only when the Residential Treatment Program has documented that the intent of these regulation(s) will be satisfactorily achieved in a manner other than that prescribed by the regulation(s).	C	Variance granted to Regulation 904 March 2013, continues.
114 When a Residential Treatment Program fails to comply with the variance agreement, the agreement shall be subject to immediate cancellation.	C	
RENEWAL		
115 Application for renewal of a Residential Treatment Program license shall be made in accordance with the policies and procedures of the licensing authority.	C	06/01/2015
CHANGES		
116 A Residential Treatment Program shall notify the Licensing Authority at least 60 days before any of the following: **A substantial change in services provided** or population served; A planned change in staffing pattern; A planned change in the Administration; A planned change of ownership and/or governance; A planned change of location; A planned change in the name of the Residential Treatment Program.	C*	See comment section
117 A Residential Treatment Program shall notify the licensing authority as soon as the change is known, if any of the above mentioned changes occur without prior planning.	C	RLSI was notified of the entire unit "lock down" in April 2015.
REPORTING		
118 A Residential Treatment Program shall report any suspected or alleged incident of child abuse or neglect within 24 hours, to the Department for Children and Families, Centralized Intake Unit. (33 V.S.A., Chapter 49, §4913).	C	
119 A Residential Treatment Program will supervise and separate the accused individual(s) and the victim(s) whose behavior caused report to the Department for Children and Families unless or until otherwise instructed by the Special Investigation Unit and/or Residential Licensing Unit.	C	
120 A Residential Treatment Program shall report incidents of sexual activity between residents, as defined in these regulations, within 24 hours to the Department for Children and Families, Centralized Intake Unit; (800) 649-5285.	C	
INVESTIGATIONS		
121 A Residential Treatment Program shall cooperate fully in investigations of any complaint or allegation associated with the program. This may include, but is not limited to the Department for Children and Families Special Investigations Unit, and the Licensing Authority.	C	
NOTIFICATION		
122 A Residential Treatment Program shall immediately, or as soon as reasonable, report to the Licensing Authority incidents that could potentially affect the safety, physical or emotional welfare of children/youth within the program. Written report shall follow verbal report within 24 hours.	C	
123 Incidents of restraint which result in injury to a child/youth or staff member, requiring medical attention shall be reported in writing to the Licensing Authority as soon as possible, and not later than within 24 hours. (see regulation 657)	C	
124 Incidents of seclusion which result in injury to a child/youth or staff member, requiring medical attention shall be reported in writing to the Licensing Authority as soon as possible, and not later than within 24 hours. (see regulation 666).	C	
125 Residential Treatment Program shall report, **verbally** and in writing, within 24 hours to the Licensing Authority incidents where the program knowingly or negligently violates licensing regulations.	C*	See comment section
200 GENERAL PROVISIONS		
THE RIGHTS OF CHILDREN/YOUTH AND FAMILIES		
201 A Residential Treatment Program shall ensure children/youth the following rights: to be served under humane conditions with respect for their dignity and privacy; to receive services that promotes their growth and development; to receive gender specific, culturally competent and linguistically appropriate service; to receive services in the least restrictive and most appropriate environment; to access written information about the providers policies and procedures that pertain to the care and supervision of children, including a description of behavior management practices; to be served with respect for confidentiality; **to be involved, as appropriate to age, development and ability, in assessment and service planning;** to be free from harm by caregivers or others, and from **unnecessary or excessive use of restraint and seclusion/isolation;** to file complaints and grievances without fear of retaliation.	C*	See bold print 50% (4 out of 8) of youth interviewed indicated they have a role in treatment planning and review. Addressed in Plan of Care/Treatment Planning section (with 521,522,525) Restraint and Seclusion addressed in separate comments section

202 A Residential Treatment Program shall ensure families and custodians the following rights: to access written information about the providers policies and procedures that pertain to the care and supervision of children, including a description of behavior management practices; to receive services with respect for confidentiality; **to be involved in assessment and service planning**; to give and to withhold informed consent; to be notified immediately or as soon as reasonable of any runaway, attempted suicide, suicide, or medical emergency requiring the services of an Emergency Room or hospitalization, death or any other seminal event in the life of their child/youth; **to be notified within 24 hours following the restraint or seclusion of their child/youth; to file complaints and grievances without fear of retaliation.**	C*	3 out of 3 parents and 5 out of 5 social workers, representing 5 different districts, interviewed indicate a lack of inclusion in the treatment planning and review process. Addressed in Plan of Care/Treatment Planning section (with 521,522,525)
203 A Residential Treatment Program shall document prohibitions and limitations regarding parental involvement in the child/youth's Plan of Care and review such prohibitions and limitations at least every 90 days.	N	See Comment Section (visitation policy not enough – should be individualized)
300 THE GOVERNING AUTHORITY		
301 A Residential Treatment Program shall be incorporated. If incorporated outside the State of Vermont, it shall secure authorization from the Secretary of State to do business in Vermont.	C	
302 The Governing Authority is ultimately responsible for all aspects of the Residential Treatment Program.	C	n/a. There is no Board of Directors. Woodside is operated by the State of Vermont, Department for Children and Families. Ultimate authority within DCF resides with the Commissioner of DCF.
303 The Governing Authority shall make available to the Licensing Authority, upon written request, a list of directors and officers of the board.	C	
304 The Governing Authority shall: Review major operational decisions; Have provisions which preclude both the fact and appearance of conflict of interest; Specify the terms of appointment or election of members, officers, and chairperson(s) of committees; Specify the frequency of meetings and attendance requirements; Prohibit board members from being paid members of the staff.	C	
305 The Governing Authority of a Residential Treatment Program shall appoint a qualified administrator.	C	Jay Simons, Director
306 The Governing Authority is responsible for ensuring the writing of an annual evaluation of the Program Administrator, based on the job description which delineates the responsibilities and authority of the Program Administrator.	C	Last evaluation 07/07/2015 of Director Jay Simons
307 The Governing Authority is responsible for assuring the Residential Treatment Program's continual compliance and conformity with the following: The program's stated goals and objectives; Relevant laws and/or regulations, whether federal, state, local or municipal, governing the operation of the Residential Treatment Program. This may include, but is not limited to Zoning; Department of Public Safety, Fire Prevention; Department of Health; Interstate and International Placement of Children; The Prison Rape Elimination Act of 2003.	C	
308 The Governing Authority shall ensure: Development and on-going review of program policies and procedures; Development and review of annual budgets to carry out the objectives of the Residential Treatment Program; Any fund raising, community activity, publicity or research involving children/youth is conducted in a manner which respects the dignity and rights of children, youth and their families and complies with all relevant state and federal laws regarding confidentiality.	C	
309 The Governing Authority shall require and review an annual report, written by the administrator of the program which evaluates the program in relation to the program description, with the goal of continuous quality improvement.	C	
310 The annual assessment shall identify indicators that measure the program's ability to deliver the services described in the program description. These indicators may consider (but are not restricted to) the following: The number and circumstances of planned discharges; The number and circumstances of unplanned discharges; Consumer feedback; Provision of adequate supervision as evidenced by all reports of child abuse, sexual contact between children/youth; Grievances heard, resolved and unresolved; Personnel actions taken; Staff turnover; and Employee satisfaction surveys.	C	While report is positive it doesn't include the suggested indicators i.e. staff turnover, employee satisfaction, consumer feedback, etc. Important information available that could be easily cited.
400 PERSONNEL		
GENERAL		
401 A Residential Treatment Program shall not hire, or continue to employ, any person whose health, behavior, actions or judgment might endanger the physical or emotional well-being of the children/youth served.	C	
402 A Residential Treatment Program shall not hire, or continue to employ, any person substantiated for child abuse or neglect.	C	

403 There shall be a sufficient number of personnel qualified by education, training and experience with sufficient authority to adequately perform the following functions: Administrative; Financial; Supervisory; Clinical; Case Management; Direct child care; Housekeeping; Maintenance; Food service; Maintenance of records.	C	
404 A Residential Treatment Program shall have written job descriptions for all positions within the program, including lines of authority, which are accessible to all employees.	C	
405 A Residential Treatment Program shall ensure that direct child care employees have regularly scheduled hours of work.	C*	Many employees interviewed report needing to find own coverage for time off.
406 A Residential Treatment Program shall establish policies governing employee conduct. These policies shall be designed to promote: Good role modeling; Adequate supervision of children/youth; The development of healthy relationships between adults, children/youth.	C	See Code of Conduct
QUALIFICATIONS		
407 The credentials of the program administrator, directly responsible for the therapeutic milieu within the residential treatment program, regardless of job title will include at minimum: Master's degree in a relevant field and, Four years direct care, including supervisory experience in a residential treatment program or therapeutic setting for children and/or youth. Or, Bachelor's degree in a relevant field and, Five years direct care, including two years supervisory experience in a residential treatment program or therapeutic setting for children and youth.	C	
408 The credentials of those providing supervision of direct care staff, regardless of job title will include at minimum: Master's degree in a relevant field and, One year experience providing direct care in residential treatment programs for children/youth. or, Bachelor's degree and, Two years experience providing direct care in residential treatment programs for children/youth. or, High School Diploma or GED and, Four years experience working with children/youth in residential treatment programs.	C	Operations and Clinical Supervisors meet or exceed this criteria
409 The credentials of those providing direct care for children/youth, regardless of job title will include at minimum: Bachelor's degree and, 21 years of age and, Experience working with children/youth. or, High School Diploma or GED and, 21 years of age and, Two years experience interacting with children/youth. This may include, but is not restricted to camp counselor, coach, babysitting.	C	Direct care employees meet or exceed the criteria
410 Individuals providing clinical services for children/youth and families shall have experience working with children/youth and families shall meet current Vermont licensing and certification requirements and professional standards.	C	Per Secretary of State Website
HIRING		
411 A Residential Treatment Program shall have written personnel policies and procedures for the hiring, orientation, training, supervision, evaluation, recognition, discipline and termination of employees.	C	State of Vermont Human Resources
412 Residential Treatment Program shall conduct background checks, upon hire and every three years thereafter, on all employees, board member/trustees, volunteers, student interns, and others who may have unsupervised contact with children/youth in the program. Minimally, the background checks shall include the Vermont Criminal Information Center, Vermont Child Protection Registry and the Adult Abuse Registry.	C	
413 The results of background checks must be received and evaluated by the program administrator prior to the individual being hired and prior to having any unsupervised contact with children/youth. Documentation of completed background checks and administrative review must be maintained and available to licensing upon request.	C	
EMPLOYEE ORIENTATION AND TRAINING		
414 A Residential Treatment Program shall have written policies and procedures for the orientation of new staff to the program. This orientation must occur within the first 30 days of employment and include, but is not limited to: Program description and population served; A tour of the facility; Overall program treatment philosophy and approach; Program philosophy of behavior management; Child/youth grievance process; Basic information about behavior children/youth may exhibit; Identification of early warning signs that indicate child/youth may become disruptive or aggressive and how these observations are to be reported; Professionalism in dealing with children/youth, families, and others; Confidentiality; Program policies and procedure relating to interventions employed by staff to prevent, deescalate, safely manage child/youth acting out behaviors; Roles and expectation of various personnel in preventing and responding to crisis situations; Documentation requirements; Working as part of a team; Policies regarding zero-tolerance for sexual abuse; Procedures for reporting suspected incidents of child abuse and neglect; Policies and procedures regarding runaway children/youth Policies and procedures regarding the acquisition,	C*	Provision of training is delegated to individuals with demonstrated competence in the subject area i.e. Chris Hoffman Strength Based Assessment, Aron Steward, Suicidality. Confirmed by Administrator responsible for tracking training, Spring 2015 hires have received abbreviated and limited training prior to working due to high staff turnover

storage, administration, documentation and disposal of medication; Emergency response procedures; Emergency evacuation procedures; Residential Treatment Program regulations.		and staff shortage,
415 During orientation, each employee should be made aware of the plan for his or her particular on-going training and professional development. Plans should be developed between the employee and supervisor, and should be based on their roles and responsibilities in the program.	C	
416 Staff who may work with children/youth shall receive training in the prevention and use of restraint prior to participating in the use of restraint. Staff will be competent in (but not limited to) the following: Relationship building, group processes, restraint prevention, de-escalation methods, avoidance of power struggles, and threshold for use of restraint; The physiological effect of restraint, monitoring physical distress signs and obtaining medical assistance, and positional asphyxia; Legal issues and idiosyncratic conditions that may affect the way children/youth and staff may respond to restraint (e.g., cultural sensitivity, age, gender, developmental delays, history of trauma, symptoms related to substance abuse, health risks, etc.), and; Escape and evasion techniques, time limits, the process for obtaining approval for continued restraints, the procedure to address problematic restraints, documentation, debriefing with children/youth, follow-up with staff, and investigations of injuries and complaints.	C	Confidence Assessment and Protection Systems (CAPS) and Advanced Communication Techniques (ACT), Dangerous Behavior Control Techniques (DBCT) Due to the need to hire quickly, recent hires have received abbreviated training prior working.
417 A Residential Treatment Program shall ensure supervisors and those who provide direct care receive on-going training and develop competencies relevant to the population served including (but not limited to): Relationship Building; Listening and communication; Family Engagement; Understanding and analyzing problem behaviors; Trauma informed practices; Positive behavior support; Designing and implementing routines; Setting clear limits; Praising and reinforcing behavior; Early detections of conflict situations; Interventions to minimize potential conflicts; Designing and implementing activity programs; Teaching social and anger management skills; Managing transitions; Managing personal boundaries; Harassment; Conflict resolution; First Aid and emergency medical procedures; Administration of medication and the documentation thereof.	C	Agency of Human Services and Department for Children and Families Training is available to employees as well as "outside" conferences and training opportunities.
418 A Residential Treatment Program shall ensure annual training for every employee responsible for direct child care effective de-escalation techniques, appropriate use of restraint, seclusion and expectations regarding the documentation of the use of restraint and seclusion.	C	Tracked by Lisa Jennison
EVALUATION		
419 A Residential Treatment Program shall conduct, at minimum, an annual performance evaluation based on performance expectations in the context of each employee's' job description and plan for on-going profession development.	C	Within 6 months of initial hire and annually thereafter.
420 The evaluation will identify areas of competence and document targets for growth and development to be reviewed at established intervals.	C	
421 The evaluation will be signed by the employee and his/her immediate supervisor. There must be an opportunity for the employee to express his/her agreement or disagreement with the evaluation in writing. The employee shall be given a copy of his/her evaluation.	C	
PERSONNEL FILES		
422 A Residential Treatment Program shall maintain a personnel file for each employee containing: The application for employment and/or resume; Documentation of reference checks; Employee's starting and termination dates; Applicable professional credentials/certifications; A signed job description, acknowledging receipt; Employee's plan for on-going training and professional development; Documentation of training; All annual performance evaluations; Commendations and disciplinary actions relating to the individual's job performance.	C	
STAFF COMMUNICATIONS		
423 A Residential Treatment Program shall establish procedures to assure adequate communication and support among staff to provide safety, continuity and integration of services to the children/youth. This may include logs, shift notes, minutes of meetings, etc.	N	7 out of 8 Direct Care staff report unclear and conflicting information regarding supervision and care needs for youth
VOLUNTEER SERVICES AND STUDENT INTERNS		
424 A Residential Treatment Program may utilize volunteers and student interns to work directly with a particular child/youth or group of children/youth under the supervision of an employee of the program.	C	
425 Volunteers will not provide essential services which would otherwise be unavailable.	C	
426 A Residential Treatment Program shall ensure that the needs and learning experiences of volunteers and student interns do not interfere with the care of	C	

children/youth.		
427 Volunteers and interns are subject to the same background, character and reference checks as employees.	C	
428 Volunteers shall receive training relevant to the work they will be doing and issues of confidentiality.	C	
429 Student Interns shall receive training relevant to the work they will be doing, including (but not limited to) the training provided employees within the first 30 days of hire. See regulation 415	C	
500 TREATMENT AND CASE MANAGEMENT SERVICES		
PROGRAM DESCRIPTION		
501 A Residential Treatment Program shall have a written program description, accessible to prospective residents, parents, custodians, placing agencies and the general public upon request.	C	
502 The program description shall include: Description of the population served; Criteria for admission; Exclusionary criteria; Description of the milieu; Description of the treatment modalities; Description of the clinical services provided; Description of the educational services provided.	C	
CASE RECORDS		
503 A Residential Treatment Program shall have written policies and procedures for protection of the confidentiality of all children/youth's records.	C	
504 A Residential Treatment Program shall maintain record(s) for each child/youth. The content and format of these records shall be uniform within the program and minimally include: The name of the child/youth; Gender; Date of birth; Date of Admission; Legal custody and custodianship status; Informed consent signed by the parent(s) and custodian to provide emergency medical treatment and for the administration of medication; Contact information for the parent(s), caretakers; Documented acknowledgement from the child/youth, parent(s) and custodian that they have been informed of the program's policies and procedures regarding the use of restraint and seclusion; Informed consent signed by parent(s) and custodian regarding the policies and procedures guiding the use of restraint and seclusion that may occur while the child/youth is in the program; De-escalation intervention plan; Referral and Intake information; Treatment/clinical records; Education records; Cumulative medical records including date and results of last physical and dental examinations; Plan of Care, amendments and reviews; Incident Reports; Discharge Plan; Date of Discharge; and Contact information of the person or program to which the child/youth was discharged.	C	
505 When information is in the possession of another person or agency and unavailable to the program, the program shall document attempts to acquire that information.	C	
506 A Residential Treatment Program shall establish policies and procedures regarding the retention, storage and disposal of records.	C	Destroyed upon 18th birthday except treatment plan for which Medicaid has been billed, per DCF policy
REFERRAL/ADMISSION PROCESS		
507 Residential Treatment Program shall accept youth into care only when a current intake evaluation has been completed. The evaluation shall include information and assessments regarding the family, the child/youth's developmental, social, behavioral, psychological, and medical histories, allergies and any special needs.	C	
508 A Residential Treatment Program shall accept and serve only those children/youth whose needs can be met by the services provided by the program.	C	EXEMPT
509 A Residential Treatment Program shall have written referral and admission policies and procedures.	C	
510 A Residential Treatment Program shall ensure that the child/youth, his/her parent(s) and custodian are provided reasonable opportunity to participate in the admission process and decisions, and that due consideration is given to any questions/concerns.	C	
511 A Residential Treatment Program shall provide children, youth, families and custodians upon placement a clear and simple written statement that includes: The procedure used to report complaints or grievances, including timelines and accessible reporting formats; Assurance that the complaint may be submitted to someone other than the individual named in the complaint; Assurance that retaliation will not be tolerated; An opportunity for the child, youth, family member, custodian or staff member to present his or her version of events and to present witnesses; A process for informing the complainant of the results; A process for appeal; Contact information for the licensing authority; and Contact information for the State-designated protection and advocacy system.	C	Client Orientation Handbook
512 A Residential Treatment Program shall ensure that upon placement, each		

child/youth is asked if he/she has any physical complaints and is checked for obvious signs of illness, fever, rashes, bruises and injury. The results of this interview shall be documented and kept in the child/youth's record.	C	
513 Depending on the age, gender and needs of the child/youth an inventory and/or search of a child/youth's belongings as part of the admission process activity will be conducted by a same gender staff person as the child/youth being admitted and in the child/youth's presence.	C	Health Screening upon admission. Found in Intake Procedure
514 A Residential Treatment Program shall obtain the written informed consent of a child or youth, their parent(s) and custodian before the child or youth is photographed and/or recorded for research and/or program publicity purposes.	C	
515 A Residential Treatment Program shall assign a staff member to orient the child/youth and his/her parent(s) and custodian, to life at the program; including a verbal review of emergency evacuation procedures, the child/youth's rights and program expectations.	C	Client Orientation Handbook
516 A Residential Treatment Program shall make available to each child/youth, parent(s), and custodian, a simply written list of rules and expectations governing children/youth's behavior.	C	
517 The program will inform the child/youth, parent(s) and custodian of the policies and procedures regarding the use of restraint and seclusion. While this orientation will include the following content, the mode of delivery is dependent on the population served. Explanation of de-escalation techniques staff members may employ to defuse the situation in an attempt to avoid the use of restraint or seclusion; Description of situations and criteria for the use of restraint or seclusion; Who is authorized to approve and initiate the use of restraint or seclusion; A description of the restraint techniques authorized for use; A viewing of rooms used for seclusion; The protocol for the monitoring of the child/youth's health and well-being during the restraint, including time frames; The protocol for supervision and monitoring of the child/youth's health and well-being while secluded, including time frames; The decision-making process used by staff for the discontinuation of the use of restraint or seclusion; The internal grievance procedure to report inappropriate use restraint or seclusion; and Contact information for the Licensing Authority.	C	Client Orientation Handbook
518 A Residential Treatment Program will obtain written acknowledgement from the child/youth, parent(s) and custodian that they have been informed of the program's policies and procedures regarding the use of restraint and seclusion.	C	
519 A Residential Treatment Program that uses restraint or seclusion shall offer the child/youth, parent(s) and custodian the opportunity to provide information about the child/youth that may help prevent the use of restraint and seclusion.	C	
520 A Residential Treatment Program shall gather and assess the following information to develop an individualized de-escalation plan for each child/youth to avoid the use of restraint and seclusion. The child/youth's history of violence; The child/youth's history of suicidal ideation or attempts; Events that may trigger aggressive or suicidal behavior; Techniques to regain control, self regulate, self-sooth that have been successful in the past; Preexisting medical conditions or physical disabilities that place the child/youth at increased risk of harm, and History of trauma that places the child/youth at increased risk of psychological harm if he/she is restrained or secluded.	C	
PLAN OF CARE		
521 A Residential Treatment Program shall develop a Plan of Care based on the review of the referral information and input from the referral source, the child/youth, parent(s) and custodian within seven days.	C	Preliminary Plan of Care completed within 3 days per policy ranges from 42.86%-100%, most recently 63% according to Woodside Quality Assurance Administrator.
522 The Plan of Care shall include: Reason for Admission, Preliminary Goals and Objectives; Services/Interventions to be provided, by whom, and frequency; How progress will be measured; Family contact and level of involvement; Mental Health status; Physical Health status; Social Skills; Family relationships; Recreation/Activities/Interests; Education; Activities of daily living/Independent living skills; De-escalation Intervention Plan; Plan for discharge; Aftercare planning.	C*	See Comments
523 Plans of Care shall be signed by the administrator of the program (or designee).	C	
524 A Residential Treatment Program shall demonstrate child/youth, parental and custodial participate in the development of the Plan of Care.	C	
525 A Residential Treatment Program shall review and revise the Plan of Care at least once every 90 days and shall evaluate the degree to which the goals have been achieved, identify successful interventions, progress toward discharge planning and recommendations.	N	Corrective action in comments
526 A Residential Treatment Program shall ensure that the Plan of Care and	C	

subsequent revisions are explained to the child/youth, his/her parent(s) and custodian in language understandable to everyone.		
527 The current Plan of Care shall be available upon request at the time of discharge.	C	
600 RESIDENTIAL LIFE		
SUPERVISION		
601 A Residential Treatment Program shall provide adequate supervision appropriate to the treatment and developmental needs of children/youth.	C	
602 A Residential Treatment Program shall ensure that each child/youth has ready access to a responsible staff member throughout the night.	C	
603 A Residential Treatment Program shall provide adequate overnight supervision consistent with the needs of the children/youth.	C	
FAMILY INVOLVEMENT		
604 A Residential Treatment Program shall make every possible effort to facilitate opportunities for children/youth to communicate with parent(s), siblings, and custodian to foster permanent relationships with family, in accordance with the Plan of Care.	C*	Client Orientation Handbook is good, but individualized plan is absent from Plan of Care. See Reg 522
605 Alternative visiting hours shall be provided for families who are unable to visit at the prescribed times, consistent with the Plan of Care.	C	
606 A Residential Treatment Program shall not use family contact as an incentive to elicit desired behavior; likewise family contact shall not be withheld as a consequence for misbehavior.	C	
607 A Residential Treatment Program shall have written procedures for overnight visits outside the program which includes; The child/youth's location; Length of stay; Plan for transportation; Plan for conveying medication; Discussion of medication regime; Recommendations for supervision; Name, address and contact information for person responsible for the child/youth while they are away from the program; Relationship to the person responsible for the child/youth; Plan for the unforeseen return of the child/youth, and Documentation of above activities.	C	
608 A Residential Treatment Program shall not place a child/youth in a foster home unless the Residential Treatment Program is also a licensed Child Placing Agency.	C	
EDUCATION		
609 A Residential Treatment Program shall ensure that every child/youth is provided an appropriate educational program in accordance with state law and approved by the Vermont Department of Education.	C	While not an "Approved Independent School" Woodside follows the Independent School Guide & PbS standards.
DAILY ROUTINE		
610 A Residential Treatment Program shall follow a written daily routine, including weekends and vacations.	C	
611 Daily routines shall not conflict with the implementation of a child/youth's Plan of Care.	C	
COMMUNICATION AND PRIVACY		
612 A Residential Treatment Program shall permit children/youth to send and receive mail, make telephone calls and e-mail, consistent with the Plan of Care.	C	
613 Program staff shall read a child/youth's mail and e-mail or listen in on telephone conversations only with the child/youth's full knowledge and understanding of the reasons for this action, consistent with the Plan of Care.	C	
614 A Residential Treatment Program shall not bar contact between a child/youth and their parent(s), custodian, attorney, *guardian ad litem*, clergy and State-designated protection and advocacy system.	N	Some DCF staff interviewed report being denied access, communication with the youth.
615 When the right of a child/youth to communicate in any manner with any person outside the program must be curtailed, or monitored a residential program shall: Document the decision, including who was involved in the decision making process, reasons for limitations of his/her right to communicate with the specified individual(s); Inform the child/youth of the decision making process; Review this decision minimally at each review of the Plan of Care.	C*	Client Orientation Handbook and Comments
MONEY/FINES		
616 A Residential Treatment Program shall permit children/youth to access his/her own money consistent with his/her Plan of Care.	C	
617 Fines shall not be levied except in accordance with a written Program Description which includes a description of how revenues from fines are used for the benefit of the children/youth residing in the program.	C	
CHORES		

618 The Residential Treatment Program may assign chores that provide for the development of life skills and not used as punishment.	C	
619 Children/youth participation in chores shall not be a substitute for housekeeping and maintenance staff.	C	
RELIGION		
620 A Residential Treatment Program with religious affiliation(s) or expectations for participation shall include such information in the program description.	C	
621 A Residential Treatment Program shall make every effort to accommodate a child/youth's desire to attend and/or participate in religious activities and services in accordance with his/her own faith.	C	
PERSONAL BELONGINGS		
622 A Residential Treatment Program shall ensure that children/youth have his/her own adequate, clean, and appropriate clothing.	C	EXEMPT - See Regulation 906
623 A Residential Treatment Program shall allow children/youth to bring his/her personal belongings to the program e.g. comfort items, memorabilia.	C	
624 Limitations on the quantity of personal items shall be discussed during the referral/admission process.	C	
625 Provisions shall be made for the protection of children/youth's personal property.	C	
626 Any search of a child/youth's personal belongings for contraband deemed necessary for the safety of the child/youth or others within the program will be conducted in the presence of the child/youth, by same gender staff as the child/youth unless contraindicated and documented.	C	
PERSONAL CARE AND HYGIENE		
627 A Residential Treatment Program shall ensure children/youth receive guidance in healthy personal care and hygiene habits.	C	
FOOD SERVICES		
628 A Residential Treatment Program shall ensure that a child/youth are provided at least three nutritional meals, available daily at regular times.	C	
629 There shall be no more than 14 hours between the evening meal and breakfast, unless nutritional snacks are offered during the evening.	C	
630 No child/youth in a Residential Treatment Program shall be denied a meal for any reason, except by a documented doctor's order.	C	
631 No child/youth shall be required to eat anything they do not want to eat, nor there be consequences for food preferences.	C	
632 Special dietary needs shall be discussed during the referral/intake process and the Residential Treatment Program shall make healthy accommodations for children/youth with special dietary needs.	C	
MEDICAL CARE		
633 A Residential Treatment Program shall ensure a routine physical examination by a medical practitioner for each child/youth within 30 days of admission unless the child/youth received such an examination within 12 months prior to admission.	C	
634 A Residential Treatment Program shall have written procedures for staff members to follow in case of medical emergencies, including the administration of first aid.	C	
635 A Residential Treatment Program must ensure that children/youth receive timely, competent routine and emergency medical care when they are ill or injured and that they continue to receive necessary follow-up medical care with parent(s) and custodians' consent.	C	
636 A Residential Treatment Program shall maintain a cumulative record of medical care. This record shall include: The name of the resident; The reason for the visit; Name and contact information for the provider; Results of examination, tests and recommendations; Medication(s) prescribed; The time and date the medication is administered.	C	
DENTAL CARE		
637 A Residential Treatment Program shall make reasonable effort to ensure each child/youth has had a dental examination by a dentist within 30 days of the child/youth's admission unless the child/youth has been examined within 6 months prior to admission and the program.	C	
638 Residential Treatment Program shall make reasonable effort to ensure children/youth receive timely, competent routine and emergency dental care and that they continue to receive necessary follow-up dental care.	C	
ADMINISTRATION OF MEDICATION		
639 A Residential Treatment Program shall have written policies and procedures governing the use and administration of medication to children/youth.	C	Procedures 405a – 405e

640 Policies and procedures governing the use and administration of medication shall be disseminated to all staff responsible for prescribing and administering medication.	C	
641 These policies shall specify who can administer medication, under what circumstances and procedures for documenting the administration of medication.	C	
642 A Residential Treatment Program shall ascertain all medication a child/youth is taking when coming into care and obtain parental and custodial consent for the administration of medication and any changes in medication(s).	C	
643 Medication will be administered as prescribed by a licensed practitioner.	C	
644 Medication errors shall be documented on an incident report.	C	
PETS		
645 A Residential Treatment Program shall have written policies and procedures address the presence and supervision of pets in the program.	C	
646 A Residential Treatment Program will ensure that the presence of any pet does not have an adverse effect on any child/youth residing in the program, for example allergies or fear.	C	
647 A Residential Treatment Program will maintain a separate record on each pet that includes: Identifying information; Owner(s) contact information; Record of vaccinations; Record of registration; Statement of good health from a Veterinarian; Veterinarian's contact information and; Incidents involving the pet, for example if the pet is abused by a child/youth, or if the pet bites a child/youth or staff member.	C	
BEHAVIOR MANAGEMENT		
648 A Residential Treatment Program shall prohibit all cruel, severe, unusual or unnecessary practices including, but not limited to: Strip searches; Body cavity searches; Restraints that impede a child/youth's ability to breathe or communicate; Chemical restraint; Mechanical restraint; Pain inducement to obtain compliance; Hyperextension of joints; Peer restraints; Locked buildings, rooms, closets, boxes, recreation areas or other structures from which a child/youth can not readily exit; Discipline or punishment which is intended to frighten or humiliate a child/youth; Requiring or forcing a child/youth to take an uncomfortable position, such as squatting or bending, or requiring or forcing the child/youth to repeat physical movements; Spanking, hitting, shaking, or otherwise engaging in aggressive physical contact (horseplay) with a child/youth; Physical exercises such as running laps or performing push-ups; Excessive denial of on-grounds program services or denial of any essential program services; Depriving a child/youth of meals, water, rest, or opportunity for toileting; Denial of shelter, clothing, or bedding; Withholding of personal interaction, emotional response or stimulation; Exclusion of the child/youth from entry to the residence; Any act defined as abuse or neglect by 33 V.S.A., Chapter 28, §4912.	C	Exempt from: Strip Searches Mechanical Restraints Locked buildings, rooms, recreations area. See "Additional Regulations" Section of this report, specifically Regulations 903, 904 and 905.
649 A Residential Treatment Program shall ensure that behavior management is not delegated to persons who are not known to the child/youth.	C	
PHYSICAL RESTRAINT		
650 A Residential Treatment Program shall not use any form of restraint without prior approval of the Licensing Authority.	C	
651 Restraint shall be used only to ensure that immediate safety of the child/youth or others when no less restrictive intervention has been, or is likely to be, effective in averting danger. Restraint shall be used only as a last resort.	C*	See 654
652 Any restraint lasting more than 10 minutes requires supervisory consultation, approval and oversight.	C	
653 Any restraint lasting more that 30 minutes requires clinical/administrative consultation, approval and oversight.	C	
654 Restraint shall never be used for coercion, retaliation, humiliation, as a threat of punishment or a form of discipline, **in lieu of adequate staffing**, for staff convenience, or for property damage not involving imminent danger.	C*	Insufficient staffing level is offered as the explanation for incidents of noncompliance.
655 A Residential Treatment Program shall develop and implement written policies and procedure that govern the circumstances in which restraint is used. These policies and procedures shall contain and address the following: The threshold for initiating restraint; Forms of restraint that are permitted; Staff members authorized and qualified to order or apply restraint; Procedures for monitoring the child/youth placed in restraint for signs of discomfort and medical issues; Time limitations on the use of restraint; The immediate and continuous review of the decision to restrain; Documentation of the use of restraint; Record keeping of incidents of restraint; Debriefing with the child/youth; Debriefing with all witnesses; Debriefing staff; Notification of parent(s) and custodian; and Administrative review of all restraints.	C	FSD Policy 177
656 Incidents of restraint shall be reported to the parent(s) and the person legally responsible for the child/youth as soon as possible, and not later than 24 hours.	C	

657 Incidents of restraint which result in injury to a child/youth or staff member, requiring medical attention shall be reported in writing to the Licensing Authority as soon as possible, and not later than 24 hours.	C	
SECLUSION		
658 A Residential Treatment Program shall not use any form of seclusion without prior approval of the Licensing Authority.	N	Modality has not been described or approved.
659 Seclusion shall be used only to ensure that immediate safety of the child/youth or others when no less restrictive intervention has been, or is likely to be, effective in averting danger.	N	Seclusion is used inappropriately and corrective action is needed.
660 Children/youth in seclusion will be provided constant, uninterrupted supervision by qualified staff, employed by the program and familiar to the child/youth.	N	
661 Seclusion lasting more than 10 minutes requires supervisory approval and oversight.	C	
662 Seclusion lasting more that 30 minutes requires clinical/administrative consultation, approval and oversight.	C	
663 Seclusion shall never be use for coercion, retaliation, humiliation, as a threat of punishment or a form of discipline, **in lieu of adequate staffing**, or for staff convenience.	N	Insufficient staffing level is offered as the explanation for above violations.
664 A Residential Treatment Program shall develop and implement a written policies and procedures that govern the circumstances in which seclusion is used. These policies and procedures shall contain and address the following: Circumstances under which seclusion may be used; Staff members authorized to approve the use of seclusion; Procedures for monitoring children/youth in seclusion; Time limitations on the use of seclusion; The immediate and continuous review of the decision to use seclusion; Documentation of the use of seclusion; Record keeping of incidents of seclusion; Debriefing with the child/youth; Debriefing with all witnesses; Debriefing staff; Notification of parent(s) and custodian; and Administrative review of all restraints and follow up actions taken.	N	Continues to be under revision in the context of the ISU
665 Incidents of seclusion shall be reported to the parent(s) and person legally responsible for the child/youth as soon as possible, and not later than within 24 hours.	C	
666 Incidents of seclusion which result in injury to a child/youth or staff member, requiring medical attention shall be reported in writing to the Licensing Authority as soon as possible, and not later than within 24 hours.	C	
DOCUMENTATION		
667 Each incident of restraint and seclusion shall be documented separately by staff members directly involved in the intervention as soon as possible, not later than 24 hours.	C	
668 This incident report written by the staff members shall include: Name, age, height, weight, gender and race of the child/youth; Date, beginning and ending time of occurrence; A description of what happened; including what activity the child/youth was engaged in prior to the escalation, the precipitating events; Description of de-escalation and less intrusive methods of intervention used and reasons for their use; Supervisory, clinical and/or administrative notification and approval; Staff involved, including full names, titles, relationship to the child/youth and if a restraint, date of most recent formal de-escalation and restraint training; Witnesses to the precipitating incident and subsequent restraint or seclusion; Preventative actions that may be taken in the future; Name of person making the report; Detailed description of any injury to the child/youth; Detailed description of any injury to staff members; Any action taken by the program as a result of any injury.	C	
669 Incident Reports shall be reviewed and signed by the supervisor/administrator within 8 hours. Documentation of the administrative review must include follow up actions which may include: Debriefing with child/youth; Debriefing with witnesses; Debriefing with staff; Medical needs; Identified need for additional training; or Personnel action (if warranted).	C	
RESTRAINT AND SECLUSION MONITORING		
670 A Residential Treatment Program will establish documentation and monitoring systems, enabling all incidents of restraint and seclusion to receive administrative review. The data and management systems will have the potential to monitor staff, individual, and critical programmatic involvement in incidents. The program shall track the following: Shift; Location; Day of the week; Time of day/night Incident antecedents; Length child/youth was held in restraint or seclusion; Type of restraint or seclusion; Age; Gender; Ethnicity; Number of incidents per child/youth; Staff members involved; Child/youth injuries requiring medical attention; and Staff injuries requiring medical attention.	C	
700 PHYSICAL ENVIRONMENT AND SAFETY		

GENERAL		
701 A Residential Treatment Program, including all structures and property shall be constructed, furnished, equipped, used and maintained so that the privacy, safety, health and physical comfort of all children/youth are ensured and in compliance with federal, state, local and municipal regulations.	C*	See Comment Section
702 A Residential Treatment Program shall pass and maintain documentation of an annual inspection of all buildings utilized by the program by an independent, qualified fire safety inspector.	C	
703 A Residential Treatment Program shall have a designated space to allow private discussions and counseling sessions between individual children/youth and their family members, visitors and staff.	C	
704 First Aid supplies shall be accessible in each living unit of a Residential Treatment Program.	C	
705 A Residential Treatment Program shall keep medication, cleaning supplies and other potentially harmful materials securely locked. Keys to such storage spaces shall be available only to authorized employees.	C	
706 A Residential Treatment Program shall ensure that there are sufficient and appropriate storage facilities.	C	
707 Each separate living unit within a Residential Treatment Program shall have 24-hour telephone service.	C	
708 A Residential Treatment Program shall not permit any firearm or chemical weapon on the property, including program and employee vehicles.	C	
709 A Residential Treatment Program shall ensure that children/youth are not exposed to second hand smoke in the facility, on the property or in program vehicles used to transport children/youth.	C	
710 Facility and staff vehicles shall be locked while on the property.	C	
711 A responsible adult will provide continuous and uninterrupted supervision when children/youth are swimming or otherwise engaged in water sports/activities.	C	
712 On-ground pools shall be enclosed and regularly tested to ensure that the pool is free of contamination.	C	
713 A Residential Treatment Program shall have written procedures for employees and children/youth to follow in case of emergency or disaster.	C	
714 A Residential Treatment Program shall conduct actual or simulated evacuation drills at least monthly and varied by shift. A record of such emergency drills shall be maintained including the date and time of the drill and whether evacuation was actual or simulated. All personnel in the building shall participate in emergency drills. The Residential Treatment Program shall make and document special provisions for the evacuation of any developmentally or physically disabled children/youth from the program.	C	
715 A Residential Treatment Program shall ensure that children/youth are properly secured and adequately supervised in any vehicle used by the program to transport children/youth.	C	
716 A Residential Treatment Program shall maintain, update and share with parent(s), custodians and the Licensing Authority the contact information of a specific individual to contact in the event of the emergency evacuation of children/youth.	C	
SLEEPING AREAS		
717 A Residential Treatment Program shall ensure that all sleeping areas used by children/youth are of sufficient size to allow for a bed and to afford space for dressing and quiet activities.	C	
718 No child/youth's bedroom shall be stripped of its contents and used for seclusion.	C	
719 A Residential Treatment Program shall ensure that no room without a window shall be used as a bedroom.	C	
720 A Residential Treatment Program shall not permit more than four children/youth to occupy a designated sleeping area or bedroom space.	C	
721 A Residential Treatment Program will assign roommates taking into account gender, age, developmental and treatment needs.	C	
722 Each child/youth residing in a Residential Treatment Program shall have his/her own bed.	C	
723 A Residential Treatment Program shall ensure that there is sufficient space between a mattress and another mattress (bunk bed) or ceiling for each occupant to sit up comfortably in bed.	C	
724 A Residential Treatment Program shall provide each child/youth with his/her own dresser or other adequate storage space in his/her bedroom unless there is a documented safety concern.	C	
725 The use of open flames shall not be allowed in sleeping areas of a Residential Treatment Program.	C	

TOILET, SHOWER AND BATHING FACILITIES		
726 A Residential Treatment Program shall have available to children/youth a minimum of one wash basin with hot and cold water, one flush toilet and one bath or shower with hot and cold water for every six children/youth.	C	
727 A Residential Treatment Program shall provide toilets and baths or showers which allow for individual privacy unless a child/youth requires assistance.	C	
728 A Residential Treatment Program shall have bathrooms with doors which can be opened from both sides.	C	
729 A Residential Treatment Program serving a co-ed population shall ensure private toileting, shower and bathing facilities.	C	
KITCHEN/DINING AREA		
730 A Residential Treatment Program shall have a sufficiently well-equipped kitchen to prepare meals for the children, youth and employees.	C	
731 A Residential Treatment Program shall be arranged and equipped so children, youth and employees can have their meals together.	C	
LIVING ROOM		
732 A Residential Treatment Program shall have a living room/common area where children/youth may gather for reading, study, relaxation, conversation and entertainment.	C	
SECLUSION ROOMS		
733 A Residential Treatment Program shall ensure all rooms used for seclusion meet all applicable state and local fire and safety codes.	C	
734 A Residential Treatment Program shall ensure all rooms used for seclusion are safe, clean, and well-maintained.	C	
735 A Residential Treatment Program shall ensure all rooms used for seclusion have adequate light, ventilation and maintain an appropriate room temperature.	C	
736 A Residential Treatment Program shall ensure all rooms used for seclusion are designed for continuous supervision.	C	
EMPLOYEE SPACE		
737 A Residential Treatment Program utilizing live-in employees shall provide adequate and separate living space for these employees.	C	
738 A Residential Treatment Program shall provide office spaced which is distinct from children/youth's living areas.	C	
ADDITIONAL REGULATIONS FOR SECURE FACILITIES		
901 Orientation and on-going training shall include; Security procedures; Trauma informed use of mechanical restraint; Trauma informed execution of strip search.	C	
902 During the admission process, a child/youth shall be offered the opportunity to call his/her parent(s).	C	
903 Admitting staff shall conduct a search of the child/youth and his/her possessions upon admission. Written policies and procedures regarding searches upon admission shall be consistent with the following provisions: All searches shall be of the least intrusive type necessary to satisfy the safety and security needs of the facility or the safety of the child/youth and not as a form of punishment. All searches shall only be conducted by same gender staff of the child/youth. A pat search is the standard method of searching children/youth upon admission.	C	
904 Strip searches upon admission are authorized (but not required) when there is reasonable suspicion that a child/youth has on his/her person contraband, weapons, or other items concealed which present a threat to the safety and security of the facility. Reasonable suspicion is determined on an individualized basis and shall be deemed present when: Current charges involve a crime of violence; or Current charges involve use of a weapon; or Current charges are drug related; or The child/youth's prior history includes arrest, charges or convictions of the above.	C	Variance granted to include "There is evidence of current self-harming or suicidal ideation."
905 Mechanical Restraints shall only be used by the program to bring a child/youth into the facility, when exiting the facility, and off the premises while in the custody of the facility.	N	Use of mechanical restraint occurring within facility
906 A Secure Residential Treatment Program shall ensure that children/youth have clean and appropriate clothing.	C	Dress Code

COMMENTS:

Woodside is found in violation or compliance with reservation to the following regulations:

100 REGULATORY OVERSIGHT

116 (C*) Alert licensing authority regarding program changes

During the previous licensing period, RLSI raised concern about the lack of timely communication from the facility about significant changes in programming. For example, RLSI was not notified that all youth deemed amenable to treatment had been placed on the Blue Unit where "incentivized" programming was being developed while youth deemed treatment resistant were housed on the Green Unit. The Green Unit, which had recently been "locked down," has continued to utilize significant seclusion (own room, seclusion room and ISU). The regulation implies that the licensing authority will have an opportunity to provide feedback and guidance prior to significant changes. This issue has been addressed and rectified at this time. The Woodside Clinical Director is now allowed to communicate directly with RLSI regarding program changes.

Corrective Action: *Woodside leadership agrees to alert and seek comment from RLSI to any significant programmatic or policy changes.*

125 (C*) Self Report of licensing violations

Until recently, RLSI has received inconsistent notification of use of mechanical restraint. When notified the necessary information was often mixed in with other reports of physical restraint and other responses to non-compliant behavior outside of required notification. RLSI repeatedly clarified expectations regarding appropriate notification. In March 2015 only 7 of 13 incidents of mechanical restraint were reported.

***Corrective Action*:** *Woodside Leadership has agreed to make notification to RLSI both verbally and in writing whenever a licensing violation occurs at Woodside. The licensing social worker's contact number will be added to the incident packet as a reminder to the supervisor on shift and to ensure the notification takes place. Violations of regulations trigger a response from RLSI which will result in a request for the incident reports documenting the intervention and possibly a follow up interview with the youth and/or staff. This was completed on 7/6/15.*

200 GENERAL PROVISIONS

201 (C*) Rights of Children and Youth
202 (C*) Rights of Families and Custodians
203 (N) Prohibitions and limitations of parental involvement

***Corrective Action*:** *See 500 section and 600 section*

400 PERSONELL

405 (C*) regular work schedule

During the site visits, many employees interviewed mention recent contact with union due to staffing levels and concerns over overtime expectations.

***Corrective Action**: Administration will assist staff in scheduling coverage so that the responsibility to find coverage to take time off does not rest on the employee.*

DCF has acquired 7 new permanent, classified Youth Counselor positions. This will allow clinicians and administrators to return to their normal duties. Woodside has upgraded three positions to supervisor level to enhance our ability to support staff on the line.

414 (C*) Provision of training

As mentioned above, staff training was abbreviated and limited during the Spring of 2015 in an attempt get new staff working as soon as possible.

***Corrective Action**: Stabilize staff resources and ensure proper onboarding. It is expected that current and new hires will be in compliance with training expectations and this will be reviewed at 6 month interim visit.*

423 (N) Procedures to ensure adequate communication and support

Direct Care staff report not being included in the treatment planning process and often not receiving the information they need to effectively deliver individual treatment plans on the floor. Youth Counselors report confusing individual behavioral plans with individual Plans of Care. Each individual gave examples of what they describe as "constant" program changes and changing directives/plans for youth. According to some, these directives are sometimes delivered by email not readily accessible to direct care staff and often without adequate explanation.

Woodside Director informs that In April 2015 Woodside discontinued the use of the Behavioral Support Plan. The Behavioral Support Plan took line staff's attention away from the residents' IPCs.

Corrective Action: *Woodside has acquired 7 new permanent, classified Youth Counselor positions. Woodside has upgraded three positions to supervisor level to enhance their ability to support staff on the line. This allows additional resources to a) address these concerns through communication at scheduled staff meetings and during individual supervision; and direct care staff will be included in quarterly treatment team meetings on a regular basis.*

500 TREATMENT AND CASE MANAGEMENT SERVICES

Conclusions are based on interviews and file review of a sample of Plans of Care. Interviews with residents, parent(s), social workers and many staff at Woodside indicate there is a need for improvement in collaboration, teaming, and inclusiveness among treatment team members both inside and outside the facility. Document review of Plans of Care supported this determination as evidenced by 1) lack of documentation of presence of key parties at treatment planning meetings, 2)

insufficiently individualized treatment plans, and 3) evidence that plans were not updated in a timely manner. Woodside's Preliminary Plan of Care does not meet requirements described in Regulation 522 and the subsequent Plans of Care are inconsistent in this regard. For example, sample reviews of Preliminary Plans of Care do not contain individualized plans for family contact, but rather reiterate Woodside's visitation policy. One parent reported being included in a treatment team meeting (of 5 explored youth.) This practice is changed from historical norms when this activity occurred regularly.

201 (C*) Rights of Children and Youth
202 (C*) Rights of Families and Custodians
203 (N) Prohibitions and limitations of parental involvement
522 (C*) Plan of Care content requirements

Corrective Action: *Clear documentation in Plan of Care of actions and decisions related to parental contact demonstrating accommodation of family needs (eg work schedules) and of any prohibitions and limitations. Program will review list of required Plan of Care content in 522 and incorporate.*

525 (N) Review and revision of Plan of Care at least every 90 days

Corrective Action: *The Woodside Director has agreed to resume quarterly treatment team meetings which will include the youth, natural supporting person, DCF DO Social Worker and representation from Woodside's internal multidisciplinary team to include the Clinical, Residential, Education and Medical staff providing individual services to the youth.*

600 RESIDENTIAL LIFE - Communication

604 (C*) family involvement and communication to foster Plan of Care

Corrective Action: *See 522 above*

614 (N) no barring contact with DCF social workers

Some division staff stated that they have been denied access or unsupervised access to youth under their supervision. Reasons given have been social worker safety, unstable or unsafe milieu, or lack of adequate staffing. Woodside administration disputes this claim.

Corrective Action: *Woodside administration has directed Woodside Operational Leadership that social workers have unfettered access to their clients at Woodside. Ideally, visits will be scheduled in advance to support stable program operations. The Preliminary Plan of Care will include a statement that social workers may see their clients at any time while at Woodside. The Woodside Director has initiated conversation with social workers through the Juvenile Justice Workgroup.*

615 (C*): documented in Plan of Care if contact with outside parties curtailed

Corrective Action: *Preliminary Plan of Care template has been adjusted to prompt clinicians to contact family within 24 hours to seek information and set expectations regarding visiting.*

600 RESIDENTIAL LIFE - Restraint

201 (C*) Rights of Children and Youth
651 (C*) Restraint as last resort

Restraint shall be used only to ensure that immediate safety of the child/youth or others when no less restrictive intervention has been, or is likely to be, effective in averting *danger*. Restraint shall be used only as a last resort. Interviews with staff, youth, and review of incident reports suggest a low threshold for initiating restraint. Restraint should not be a function of creating an orderly environment or addressing anticipated noncompliance or resistance.

Corrective Action: *Proposed adoption of PRTF sensitive rules should create clarity on proper threshold for restraint as response to emergency safety situations in which danger to youth or others is imminent. Restraint (and seclusion) have the potential to be a traumatizing or re-traumatizing experience for children/youth and are to be avoided if reasonably possible.*
Use of restraint as a last resort will be demonstrated in written incident reports, supported in policy, administrative procedure and staff training.

654 (C*) Restraint context (in lieu of adequate staffing)

During the Winter/Spring of 2015, Woodside experienced an increase in high risk/need residents requiring staff supports not available at Woodside. As a result staff was left to resort to interventions that in some cases were not best suited for the resident and resulted in high staff assault, stress and seclusion. As the resident needs exceeded staff resources that were available on the floor (1:1 supervision) resident were "rotated" in the interest of keeping residents and staff safe. Woodside acknowledges this violation and proposes the following corrective action plan.

Corrective Action: *DCF has acquired 7 new permanent, classified Youth Counselor positions to relieve situation of inadequate staffing. DCF has agreed to create new regulations based on psychiatric residential treatment program (PRTF) standards.*

600 RESIDENTIAL LIFE - Seclusion

658 (N) Use of seclusion with prior approval
201 (C*) Rights of Children and Youth
659 (N) Seclusion as last resort
660 (N) Supervision of youth in seclusion
663 (N) Seclusion contexts (in lieu of adequate staffing)
664 (N) Written policies and protocols

The above mentioned regulations all pertain to the use of seclusion.

The definition contained within these regulations states, "Seclusion: (however named) is the confinement of a child/youth in a segregated room, for the purpose of preventing harm to self or others, with the child/youth's freedom to leave physically restricted. Seclusion is not a punishment. Voluntary time-out is not considered seclusion, even though the voluntary time out may occur in response to verbal direction; the child/youth is considered in seclusion if freedom to leave the segregated room is denied."

According to program staff, "room time" is a frequently used consequence for a myriad of behaviors and may last for days, often accompanied by "rotations". This means a youth is restricted to their cell and is sometimes allowed to exit their cell for 30 minutes before re-entering their cell. Staff and youth describe this is an intervention routinely used. 30/30 rotation involves one youth out for 30 minutes and another in their room for 30 minutes and then alternate. When the entire Green Unit was "locked down" in 2015 one youth was allowed out at a time. This practice is seclusion.

Regulatory investigations during the Winter/Spring of 2015 resulted in Woodside being cited, more than once, for violating regulation 663 in that Woodside documented use of isolation in lieu of adequate staffing.

The program is lacking program description, policy and protocols regarding the Intensive Stabilization Unit (ISU).

Corrective Action: *Woodside will cease its practice of putting youth on "rotations" in their rooms. With additional staff, youth who require separation will receive supervision and programming safely outside the company of the other. Youth restricted to rooms will be considered in seclusion and program must adhere to applicable regulations.*

Policy, procedures, and program description regarding the use of the ISU will be created and finalized with approval from this regulator and other appropriate interested parties.

DCF has agreed to create new regulations based on psychiatric residential treatment program (PRTF) standards that will likewise address these same concerns.

700 PHYSICAL ENVIRONMENT AND SAFETY

701 (C*) physical facility safety

On February 27, 2015, Woodside Assistant Director, William Cathcart received confirmation of BGS receipt of work order (#242535) from BGS. The work order details: "Problem: (Blue Unit – Right Bathroom – There are 3 conduits running along the ceiling as you open the door. There is a gap between the ceiling and conduit, this creates a danger of a resident hanging themselves, Please tighten the conduit to the ceiling leaving no gaps and/or use pick proof caulk to close the gaps."

On March 17, 2015 a resident, assessed to be suicidal and appropriate for admission to in-patient psychiatric hospitalization, attempted suicide by hanging himself in this same bathroom at Woodside.

On June 10, 2015 upon inquiry, RLSI was notified by Woodside staff that this safety issue had yet to be rectified by BGS.

On July 9, 2015 the safety issue was rectified.

Corrective Action: *Situation ameliorated.*

900 ADDITIONAL REGULATIONS FOR SECURE FACILITIES

905 (N) mechanical restraints only used for transport
201 (C*) Rights of Children and Youth

Use of mechanical restraints in violation of this regulation within the facility has been routine. Current regulation only allows youth to be mechanically restrained when being transported to or from the institution.

Woodside Administration has requested the regulation be changed to allow mechanical restraint. Also, the Governing Authority (DCF Administration) is pursuing creation of new regulations in alignment with a psychiatric residential treatment facility (PRTF) model that may allow the future use of mechanical restraint. It has been recommended that Woodside pursue a variance to RTP regulations in the meantime. This variance request has not been received as of this date and the facility continues to be in violation.

Additionally, there was a significant increase in the use of mechanical restraints during the spring of 2015. Stated explanation for this is a challenging population and low staffing. In 2013 there were 3 occurrences, 2014 there were 13 and during the first six months of 2015, there have been 40 occurrences.

Corrective Action: *Woodside administration will seek a variance related to this regulation. The variance for use of mechanical restraints must conform to expectations and procedures in conformity with those in PRTF regulations.*

The Governing Authority will pursue adoption of PRTF conforming rules to govern the future regulation of Woodside.

DCF has acquired 7 new permanent, classified Youth Counselor positions to relieve situation of inadequate staffing.

LICENSING RECOMMENDATION:

We recommend that Woodside Juvenile Rehabilitation Center be granted a conditional license as a Residential Treatment Program for a period of one year, expiring July 31, 2016 with an interim visit in January 2016.

The conditions include the following summarized corrective actions.

Woodside will:

- Report and consult licensing authority regarding program changes.
- Hold Treatment Team Meetings quarterly.
- Initiate restraint as a last resort.
- Youth restricted to rooms will be considered in seclusion and program must adhere to applicable regulations
- Develop policy regarding purpose and procedures governing the ISU.
- Request a variance to regulation prohibiting use of mechanical restraints inside the facility.

The Governing Authority will:

- Pursue adoption of PRTF conforming rules to govern the future regulation of Woodside.

Brenda Dawson Crocket, MSW
Social Worker

Chris Ward, LICSW
Social Worker

Approved by:

James Forbes, LICSW, MPA, Date
Residential Licensing & Special Investigations Director

EXHIBIT C

VERMONT

State of Vermont
Department for Children and Families
Family Services Division
280 State Drive
Waterbury, VT 05671-2401

Agency of Human Services

July 26, 2016

Jay Simons, Director
Woodside Juvenile Rehabilitation Center
26 Woodside Drive
Colchester, Vermont 05446

Dear Mr. Simons,

Please find enclosed the license and licensing report reflecting the June 2016 site visits. Please note the license is effective July 31, 2016 and expires July 31, 2017.

Since repurposing Woodside as a Psychiatric Residential Treatment Facility, Woodside has been tasked with the substantial challenge of transforming a juvenile detention facility into a treatment-focused care institution that still retains the responsibility of secure and safe detention of adjudicated youth. During the previous review, the clear majority of those interviewed (program staff, contracted employees, residents, parents, and social workers) expressed opinions and experiences that indicate an imbalance between the therapeutic and detention functions of the program. (see prior report for detail). But even though the promulgation of new, PRTF-like regulations has not come to fruition, interviews conducted during this licensing visit indicate significant progress has been made during the course of the last year in addressing all areas of concern.

Woodside is found in compliance, but with reservations to Regulation 419, which states, "*A Residential Treatment Program shall conduct, at minimum, an annual performance evaluation based on performance expectations in the context of each employee's' job description and plan for on-going profession development.*"

All fulltime permanent employees are evaluated within 6 months of initial hire and annually thereafter. RLSI has been told that the State of Vermont, Department of Human Resources does not require performance evaluations of "temps." However, DCF Residential Treatment Program regulations do require an annual evaluation of all employees. Historically, Woodside "temps" have been employed as "temps" for years and this is the "pool" from which new permanent employees are drawn from.

Woodside is found in compliance, but with reservations to Regulation 648, which states, "*A Residential Treatment Program shall prohibit all cruel, severe, unusual or unnecessary practices including, but not limited to: Pain inducement to obtain compliance;* (excerpt from a list of prohibitions)

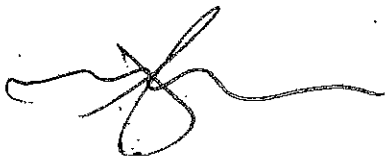
While participating in restraint training at Woodside, RLSI noted that staff were being trained in pain compliance techniques. Woodside immediately responded and is currently modifying the training curriculum to remove any pain compliance techniques.

Woodside is found in compliance, but with reservations to Regulation 658, which states, *"A Residential Treatment Program shall not use any form of seclusion without prior approval of the Licensing Authority."*

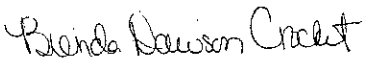
The policy defining and guiding the use of the Intensive Stabilization Unit continues to be under revision. However, aside from the above policy, Woodside has addressed prior concerns about the frequency and duration of seclusion.

If you have any questions, please feel free to contact RLSI.

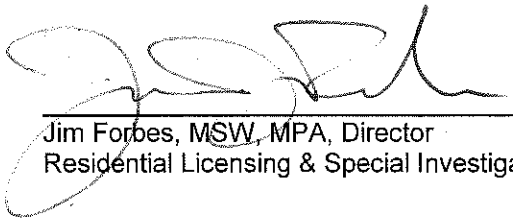
Sincerely,



Christopher Ward, LICSW, Social Worker
Residential Licensing & Special Investigations



Brenda Dawson Crocket, MSW, Senior Social Worker
Residential Licensing & Special Investigations



Jim Forbes, MSW, MPA, Director
Residential Licensing & Special Investigations

Enclosure

Cc: Ken Schatz, Commissioner, Department for Children & Families via email
Leslie Wisdom, General Counsel, Department for Children & Families via email
Karen Shea, Deputy Commissioner, Department for Children & Families, via e-mail
Melanie D'Amico, Child Placement Specialist, DCF via e-mail
Alicia Hanrahan, Education Programs Manager, Agency of Education, via e-mail
Pat Pallas-Gray, Independent Schools Consultant, Agency of Education, via email
Laurel Omland, Department of Mental Health via e-mail
Linda Cramer, Disability Rights Vermont, via e-mail
RLSI-electronic file

State of Vermont
AGENCY OF HUMAN SERVICES
DEPARTMENT FOR CHILDREN & FAMILIES

License to Operate a Residential Treatment Program

Granted to

Woodside Juvenile Rehabilitation Center
26 Woodside Drive
Colchester, Vermont 05446

in accordance with Title 33, Vermont Statutes Annotated, as amended, Section 2851.

TERMS OF THE LICENSE

MAXIMUM NUMBER OF CHILDREN: 30 youth, male & female, 10 – up to 18 years of age

CONDITIONS: Woodside will:

- Initiate restraint as a last resort.
- Develop policy regarding the purpose and procedures governing the use of the ISU.

This license is granted in consideration of the application thereof, and said application and all statements, information, answers, promises and agreements therein contained are hereby referred to and made a part hereof.

Commissioner, Ken Schatz

Effective: July 31, 2016

EXPIRES: July 31, 2017

UNLESS SOONER REVOKED OR SUSPENDED

RESIDENTIAL TREATMENT PROGRAM
Licensing Report

	Woodside Juvenile Rehabilitation Center	Original:	
Address:	26 Woodside Drive	First Relicense:	
	Colchester, Vermont 05446	Renewal:	X
Telephone:	(802) 655-4990		
		Licensed Capacity:	30
		Gender:	Male & Female
Date(s) of Site Visit:	6/8/16, 6/15/16, 6/20/16, 6/21/16	Age:	10 up to 18
Licensor(s):	Brenda Dawson, MSW and Chris Ward, LICSW		

Methodology

Review:	Review:	Interview:
X Application Documents	X Program Description	X Children/Youth
X Fire Safety Inspection documents	X Program Policies & Procedures	X Parents
n/a Minutes of Board Meetings	X Organizational Chart	X Direct Care Staff
X Communication logs	X Staff Roster/files/background Checks	X Supervisory Staff
X Medication logs	X Staff Schedules	X Clinicians
X Evacuation drill logs	X Staff Training Records/Supervision	X Administrators
X Secretary of State Website	X Client files	X Collateral agencies/departments
		X Inspect physical facility(ies)

PROGRAM SUMMARY: According to Woodside's program description "*Woodside Juvenile Rehabilitation Center is a secure residential treatment facility located in the Town of Essex in the State of Vermont. Operation of the facility is the responsibility of the Agency of Human Services (AHS), Department for Children and Families (DCF), Family Services Division (FSD).*

The goal of Woodside is to provide evidence-based practices using strength-based, goal-directed, and resident-led treatment in a safe and secure environment. It is the highest level of care in the state for youths adjudicated or pre-adjudicated delinquents, whose needs for supervision cannot be adequately addressed in the community.

Woodside incorporates a consistent treatment milieu essentially offering residents constant therapeutic services, staff accessibility, and the opportunity for social learning. Combined with this therapeutic milieu, evidenced-based therapy and assessment services are employed through individual and group delivery. To strengthen the opportunity for residents to be successful upon transition, Woodside is closely linked to the surrounding community through expert consultation, re-engagement programming and activities, treatment provider linkage, and volunteering.

The Green and Blue Units contain 12 and 14 (respectively) single occupancy resident rooms surrounding an open living day room. There are two bathrooms with showers available for resident use on each unit. The staff office walls are primarily safety glass to increase supervision.

The Intensive Stabilization Unit is comprised of three self-contained single occupancy rooms that have toilets and sinks within the room, and one padded safe room. These rooms are connected to a dayroom. The unit is equipped with shatterproof safety-glass windows, shatterproof lights and steel door for security purposes. All door locks can be electronically or manually controlled."

Information supporting this report and its conclusions was gathered by two Residential Licensing and Special Investigations social workers. On-site interviews and document reviews were conducted over the course of 4 days.

Additional comments are found at the conclusion of this report.

REGULATORY OVERSIGHT

	Compliance	Recommendations/Comments
101 A Residential Treatment Program shall not be operated without the formal prior approval of the Department for Children and Families, Residential Licensing Unit (hereafter "Licensing Authority").	C	Detention Unit opened in Colchester in 1986 and Treatment Unit in 1987.
102 A program, which was already operational before the need for a license was determined, may be considered to be in compliance if the program has applied for and is making satisfactory progress toward licensure.	C	The decision to require licensure of Woodside was made in 1996.
103 A Residential Treatment Program shall allow the Licensing Authority to inspect all aspects of a program's operation which may impact children/youth.	C	RLSI has found Woodside Administration and staff to be open and accommodating during licensing activities and investigations.
104 A Residential Treatment Program shall allow the Licensing Authority to interview any employee of the program and any child/youth in the care of the Residential Treatment Program.	C	
105 These regulations are not meant to supersede State or Federal mandates.	C	
PROCEDURES		
106 An applicant shall apply for a license on a form provided by the Licensing Authority and provide requested information.	C	
107 When a Residential Treatment Program has made timely and sufficient application for licensing renewal, the existing license does not expire until the application for renewal has been acted upon by the department.	C	
108 A license may be issued with conditions when regulations have not been met, provided that the non-compliance does not constitute an unsafe situation or a major programmatic weakness and the program acts immediately to address the identified non-compliance.	C	
VARIANCE		
112 A Residential Treatment Program shall comply with all applicable regulations unless a variance for a specific regulation(s) has been granted through a prior written agreement with the Licensing Authority.	C	
113 A variance for specific regulation(s) shall be granted only when the Residential Treatment Program has documented that the intent of these regulation(s) will be satisfactorily achieved in a manner other than that prescribed by the regulation(s).	C	Variance to Reg. 904 granted 2013, continues. Variance to Reg. 905 granted 2015.
114 When a Residential Treatment Program fails to comply with the variance agreement, the agreement shall be subject to immediate cancellation.	C	
RENEWAL		
115 Application for renewal of a Residential Treatment Program license shall be made in accordance with the policies and procedures of the licensing authority.	C	06/01/2015
CHANGES		
116 A Residential Treatment Program shall notify the Licensing Authority at least 60 days before any of the following: A substantial change in services provided or population served; A planned change in staffing pattern; A planned change in the Administration; A planned change of ownership and/or governance; A planned change of location: A planned change in the name of the Residential Treatment Program.	C	
117 A Residential Treatment Program shall notify the licensing authority as soon as the change is known, if any of the above mentioned changes occur without prior planning.	C	
REPORTING		
118 A Residential Treatment Program shall report any suspected or alleged incident of child abuse or neglect within 24 hours, to the Department for Children and Families, Centralized Intake Unit. (33 V.S.A., Chapter 49, §4913).	C	
119 A Residential Treatment Program will supervise and separate the accused individual(s) and the victim(s) whose behavior caused report to the Department for Children and Families unless or until otherwise instructed by the Special Investigation Unit and/or Residential Licensing Unit.	C	

120 A Residential Treatment Program shall report incidents of sexual activity between residents, as defined in these regulations, within 24 hours to the Department for Children and Families, Centralized Intake Unit; (800) 649-5285.	C	Allegations of sexual abuse by youth are investigated by RLSI
INVESTIGATIONS		
121 A Residential Treatment Program shall cooperate fully in investigations of any complaint or allegation associated with the program. This may include, but is not limited to the Department for Children and Families Special Investigations Unit, and the Licensing Authority.	C	Allegations of child abuse by staff at Woodside are conducted by the Agency of Human Services
NOTIFICATION		
122 A Residential Treatment Program shall immediately, or as soon as reasonable, report to the Licensing Authority incidents that could potentially affect the safety, physical or emotional welfare of children/youth within the program. Written report shall follow verbal report within 24 hours.	C	
123 Incidents of restraint which result in injury to a child/youth or staff member, requiring medical attention shall be reported in writing to the Licensing Authority as soon as possible, and not later than within 24 hours. (see regulation 657)	C	
124 Incidents of seclusion which result in injury to a child/youth or staff member, requiring medical attention shall be reported in writing to the Licensing Authority as soon as possible, and not later than within 24 hours. (see regulation 666).	C	
125 Residential Treatment Program shall report, verbally and in writing, within 24 hours to the Licensing Authority incidents where the program knowingly or negligently violates licensing regulations.	C	Woodside has addressed prior concerns and come into compliance.
200 GENERAL PROVISIONS		
THE RIGHTS OF CHILDREN/YOUTH AND FAMILIES		
201 A Residential Treatment Program shall ensure children/youth the following rights: to be served under humane conditions with respect for their dignity and privacy; to receive services that promotes their growth and development; to receive gender specific, culturally competent and linguistically appropriate service; to receive services in the least restrictive and most appropriate environment; to access written information about the providers policies and procedures that pertain to the care and supervision of children, including a description of behavior management practices; to be served with respect for confidentiality; to be involved, as appropriate to age, development and ability, in assessment and service planning; to be free from harm by caregivers or others, and from unnecessary or excessive use of restraint and seclusion/isolation; to file complaints and grievances without fear of retaliation.	C	Woodside has addressed prior concerns and have come into compliance with this regulation.
202 A Residential Treatment Program shall ensure families and custodians the following rights: to access written information about the providers policies and procedures that pertain to the care and supervision of children, including a description of behavior management practices; to receive services with respect for confidentiality; to be involved in assessment and service planning; to give and to withhold informed consent; to be notified immediately or as soon as reasonable of any runaway, attempted suicide, suicide, or medical emergency requiring the services of an Emergency Room or hospitalization, death or any other seminal event in the life of their child/youth; to be notified within 24 hours following the restraint or seclusion of their child/youth; to file complaints and grievances without fear of retaliation.	C	Woodside has addressed prior concerns and have come into compliance with this regulation.
203 A Residential Treatment Program shall document prohibitions and limitations regarding parental involvement in the child/youth's Plan of Care and review such prohibitions and limitations at least every 90 days.	C	Woodside has addressed prior concerns and is now in compliance.
300 THE GOVERNING AUTHORITY		
301 A Residential Treatment Program shall be incorporated. If incorporated outside the State of Vermont, it shall secure authorization from the Secretary of State to do business in Vermont.	C	
302 The Governing Authority is ultimately responsible for all aspects of the Residential Treatment Program.	C	Woodside is operated by the State of Vermont, Department for Children and Families. Ultimate authority within DCF resides with the Commissioner of DCF.
303 The Governing Authority shall make available to the Licensing Authority, upon written request, a list of directors and officers of the board.	C	
304 The Governing Authority shall: Review major operational decisions; Have provisions which preclude both the fact and appearance of conflict of interest; Specify the terms of appointment or election of members, officers, and chairperson(s) of committees; Specify the frequency of meetings and attendance requirements; Prohibit board members from being paid members of the staff.	C	
305 The Governing Authority of a Residential Treatment Program shall appoint a qualified administrator.	C	Jay Simons, Director
306 The Governing Authority is responsible for ensuring the writing of an annual evaluation of the Program Administrator, based on the job description which delineates the responsibilities and authority of the Program Administrator.	C	07/07/2016
307 The Governing Authority is responsible for assuring the Residential Treatment		

Program's continual compliance and conformity with the following: The program's stated goals and objectives; Relevant laws and/or regulations, whether federal, state, local or municipal, governing the operation of the Residential Treatment Program. This may include, but is not limited to Zoning; Department of Public Safety, Fire Prevention; Department of Health; Interstate and International Placement of Children; The Prison Rape Elimination Act of 2003.	C	While the promulgation of new PRTF regulations has not come to fruition, Woodside has made significant progress addressing prior concerns about "stated goals and objectives."
308 The Governing Authority shall ensure: Development and on-going review of program policies and procedures; Development and review of annual budgets to carry out the objectives of the Residential Treatment Program; Any fund raising, community activity, publicity or research involving children/youth is conducted in a manner which respects the dignity and rights of children, youth and their families and complies with all relevant state and federal laws regarding confidentiality.	C	
309 The Governing Authority shall require and review an annual report, written by the administrator of the program which evaluates the program in relation to the program description, with the goal of continuous quality improvement.	C	
310 The annual assessment shall identify indicators that measure the program's ability to deliver the services described in the program description. These indicators may consider (but are not restricted to) the following: The number and circumstances of planned discharges; The number and circumstances of unplanned discharges; Consumer feedback; Provision of adequate supervision as evidenced by all reports of child abuse, sexual contact between children/youth; Grievances heard, resolved and unresolved; Personnel actions taken; Staff turnover; and Employee satisfaction surveys.	C	Woodside has addressed prior concerns and come into compliance with this regulation.
400 PERSONNEL		
GENERAL		
401 A Residential Treatment Program shall not hire, or continue to employ, any person whose health, behavior, actions or judgment might endanger the physical or emotional well-being of the children/youth served.	C	
402 A Residential Treatment Program shall not hire, or continue to employ, any person substantiated for child abuse or neglect.	C	
403 There shall be a sufficient number of personnel qualified by education, training and experience with sufficient authority to adequately perform the following functions: Administrative; Financial; Supervisory; Clinical; Case Management; Direct child care; Housekeeping; Maintenance; Food service; Maintenance of records.	C	
404 A Residential Treatment Program shall have written job descriptions for all positions within the program, including lines of authority, which are accessible to all employees.	C	
405 A Residential Treatment Program shall ensure that direct child care employees have regularly scheduled hours of work.	C	Woodside has addressed prior concerns and come into compliance.
406 A Residential Treatment Program shall establish policies governing employee conduct. These policies shall be designed to promote: Good role modeling; Adequate supervision of children/youth; The development of healthy relationships between adults, children/youth.	C	See Code of Conduct
QUALIFICATIONS		
407 The credentials of the program administrator, directly responsible for the therapeutic milieu within the residential treatment program, regardless of job title will include at minimum: Master's degree in a relevant field and, four years' direct care, including supervisory experience in a residential treatment program or therapeutic setting for children and/or youth. Or, Bachelor's degree in a relevant field and, five years' direct care, including two years' supervisory experience in a residential treatment program or therapeutic setting for children and youth.	C	Jay Simons, B.A. in Business Management & Organizational Development & 20 years supervisory and administrative positions within VT Department of Corrections.
408 The credentials of those providing supervision of direct care staff, regardless of job title will include at minimum: Master's degree in a relevant field and, one-year experience providing direct care in residential treatment programs for children/youth. or, Bachelor's degree and, two years' experience providing direct care in residential treatment programs for children/youth. or, High School Diploma or GED and, four years' experience working with children/youth in residential treatment programs.	C	Operations and Clinical Supervisors meet or exceed this criteria
409 The credentials of those providing direct care for children/youth, regardless of job title will include at minimum: Bachelor's degree and, 21 years of age and, Experience working with children/youth. or, High School Diploma or GED and, 21 years of age and, Two years' experience interacting with children/youth. This may include, but is not restricted to camp counselor, coach, babysitting.	C	Direct care employees meet or exceed the criteria
410 Individuals providing clinical services for children/youth and families shall have experience working with children/youth and families shall meet current Vermont licensing and certification requirements and professional standards.	C	Per Secretary of State Website
HIRING		

411 A Residential Treatment Program shall have written personnel policies and procedures for the hiring, orientation, training, supervision, evaluation, recognition, discipline and termination of employees.	C	State of Vermont Human Resources
412 Residential Treatment Program shall conduct background checks, upon hire and every three years thereafter, on all employees, board member/trustees, volunteers, student interns, and others who may have unsupervised contact with children/youth in the program. Minimally, the background checks shall include the Vermont Criminal Information Center, Vermont Child Protection Registry and the Adult Abuse Registry.	C	
413 The results of background checks must be received and evaluated by the program administrator prior to the individual being hired and prior to having any unsupervised contact with children/youth. Documentation of completed background checks and administrative review must be maintained and available to licensing upon request.	C	
EMPLOYEE ORIENTATION AND TRAINING		
414 A Residential Treatment Program shall have written policies and procedures for the orientation of new staff to the program. This orientation must occur within the first 30 days of employment and include, but is not limited to: Program description and population served; A tour of the facility; Overall program treatment philosophy and approach; Program philosophy of behavior management; Child/youth grievance process; Basic information about behavior children/youth may exhibit; Identification of early warning signs that indicate child/youth may become disruptive or aggressive and how these observations are to be reported; Professionalism in dealing with children/youth, families, and others; Confidentiality; Program policies and procedure relating to interventions employed by staff to prevent, deescalate, safely manage child/youth acting out behaviors; Roles and expectation of various personnel in preventing and responding to crisis situations; Documentation requirements; Working as part of a team; Policies regarding zero-tolerance for sexual abuse; Procedures for reporting suspected incidents of child abuse and neglect; Policies and procedures regarding runaway children/youth Policies and procedures regarding the acquisition, storage, administration, documentation and disposal of medication; Emergency response procedures; Emergency evacuation procedures; Residential Treatment Program regulations.	C	Woodside has enhanced its training through collaboration with the UVM DCF Child Welfare Training Partnership to include new training modules in Fire Safety, Suicide Prevention, Mandated Reporter, Advanced Communications, Dangerous Behavior Control Techniques, Key Control, Radio Procedures, Transports, Cultural Competency, PREA, Report Writing, Individual Plan of Care, SMART Goal Development, Cognitive Behavioral Therapy, and Motivational Interviewing.
415 During orientation, each employee should be made aware of the plan for his or her particular on-going training and professional development. Plans should be developed between the employee and supervisor, and should be based on their roles and responsibilities in the program.	C	
416 Staff who may work with children/youth shall receive training in the prevention and use of restraint prior to participating in the use of restraint. Staff will be competent in (but not limited to) the following: Relationship building, group processes, restraint prevention, de-escalation methods, avoidance of power struggles, and threshold for use of restraint; The physiological effect of restraint, monitoring physical distress signs and obtaining medical assistance, and positional asphyxia; Legal issues and idiosyncratic conditions that may affect the way children/youth and staff may respond to restraint (e.g., cultural sensitivity, age, gender, developmental delays, history of trauma, symptoms related to substance abuse, health risks, etc.), and; Escape and evasion techniques, time limits, the process for obtaining approval for continued restraints, the procedure to address problematic restraints, documentation, debriefing with children/youth, follow-up with staff, and investigations of injuries and complaints.	C	Confidence Assessment and Protection Systems (CAPS) and Advanced Communication Techniques (ACT), Dangerous Behavior Control Techniques (DBCT)
417 A Residential Treatment Program shall ensure supervisors and those who provide direct care receive on-going training and develop competencies relevant to the population served including (but not limited to): Relationship Building; Listening and communication; Family Engagement; Understanding and analyzing problem behaviors; Trauma informed practices; Positive behavior support; Designing and implementing routines; Setting clear limits; Praising and reinforcing behavior; Early detections of conflict situations; Interventions to minimize potential conflicts; Designing and implementing activity programs; Teaching social and anger management skills; Managing transitions; Managing personal boundaries; Harassment; Conflict resolution; First Aid and emergency medical procedures; Administration of medication and the documentation thereof.	C	Agency of Human Services and Department for Children and Families Training is available to employees as well as "outside" conferences and training opportunities.
418 A Residential Treatment Program shall ensure annual training for every employee responsible for direct child care effective de-escalation techniques, appropriate use of restraint, seclusion and expectations regarding the documentation of the use of restraint and seclusion.	C	Tracked by Bill Cathcart
EVALUATION		
419 A Residential Treatment Program shall conduct, at minimum, an annual performance evaluation based on performance expectations in the context of each employee's' job description and plan for on-going profession development.	**C***	Permanent Staff receive an evaluation within 6 months of initial hire and annually thereafter.
420 The evaluation will identify areas of competence and document targets for growth	C	

and development to be reviewed at established intervals.		
421 The evaluation will be signed by the employee and his/her immediate supervisor. There must be an opportunity for the employee to express his/her agreement or disagreement with the evaluation in writing. The employee shall be given a copy of his/her evaluation.	C	However, Temp. Staff need to be evaluated in addition to permanent fulltime employees.
PERSONNEL FILES		
422 A Residential Treatment Program shall maintain a personnel file for each employee containing: The application for employment and/or resume; Documentation of reference checks; Employee's starting and termination dates; Applicable professional credentials/certifications; A signed job description, acknowledging receipt; Employee's plan for on-going training and professional development; Documentation of training; All annual performance evaluations; Commendations and disciplinary actions relating to the individual's job performance.	C	Well organized and maintained.
STAFF COMMUNICATIONS		
423 A Residential Treatment Program shall establish procedures to assure adequate communication and support among staff to provide safety, continuity and integration of services to the children/youth. This may include logs, shift notes, minutes of meetings, etc.	C	Prior concerns addressed by implementing quarterly meetings including all clinical and operations supervisors.
VOLUNTEER SERVICES AND STUDENT INTERNS		
424 A Residential Treatment Program may utilize volunteers and student interns to work directly with a particular child/youth or group of children/youth under the supervision of an employee of the program.	C	
425 Volunteers will not provide essential services which would otherwise be unavailable.	C	
426 A Residential Treatment Program shall ensure that the needs and learning experiences of volunteers and student interns do not interfere with the care of children/youth.	C	
427 Volunteers and interns are subject to the same background, character and reference checks as employees.	C	
428 Volunteers shall receive training relevant to the work they will be doing and issues of confidentiality.	C	
429 Student Interns shall receive training relevant to the work they will be doing, including (but not limited to) the training provided employees within the first 30 days of hire. See regulation 415	C	
500 TREATMENT AND CASE MANAGEMENT SERVICES		
PROGRAM DESCRIPTION		
501 A Residential Treatment Program shall have a written program description, accessible to prospective residents, parents, custodians, placing agencies and the general public upon request.	C	
502 The program description shall include: Description of the population served; Criteria for admission; Exclusionary criteria; Description of the milieu; Description of the treatment modalities; Description of the clinical services provided; Description of the educational services provided.	C	
CASE RECORDS		
503 A Residential Treatment Program shall have written policies and procedures for protection of the confidentiality of all children/youth's records.	C	
504 A Residential Treatment Program shall maintain record(s) for each child/youth. The content and format of these records shall be uniform within the program and minimally include: The name of the child/youth; Gender; Date of birth; Date of Admission; Legal custody and custodianship status; Informed consent signed by the parent(s) and custodian to provide emergency medical treatment and for the administration of medication; Contact information for the parent(s), caretakers; Documented acknowledgement from the child/youth, parent(s) and custodian that they have been informed of the program's policies and procedures regarding the use of restraint and seclusion; Informed consent signed by parent(s) and custodian regarding the policies and procedures guiding the use of restraint and seclusion that may occur while the child/youth is in the program; De-escalation intervention plan; Referral and Intake information; Treatment/clinical records; Education records; Cumulative medical records including date and results of last physical and dental examinations; Plan of Care, amendments and reviews; Incident Reports; Discharge Plan; Date of Discharge; and Contact information of the person or program to which the child/youth was discharged.	C	
505 When information is in the possession of another person or agency and unavailable to the program, the program shall document attempts to acquire that information.	C	

506 A Residential Treatment Program shall establish policies and procedures regarding the retention, storage and disposal of records.	C	Destroyed upon 18th birthday except treatment plans for which Medicaid has been billed, per DCF policy
REFERRAL/ADMISSION PROCESS		
507 Residential Treatment Program shall accept youth into care only when a current intake evaluation has been completed. The evaluation shall include information and assessments regarding the family, the child/youth's developmental, social, behavioral, psychological, and medical histories, allergies and any special needs.	C	
508 A Residential Treatment Program shall accept and serve only those children/youth whose needs can be met by the services provided by the program.	C	EXEMPT
509 A Residential Treatment Program shall have written referral and admission policies and procedures.	C	
510 A Residential Treatment Program shall ensure that the child/youth, his/her parent(s) and custodian are provided reasonable opportunity to participate in the admission process and decisions, and that due consideration is given to any questions/concerns.	C	
511 A Residential Treatment Program shall provide children, youth, families and custodians upon placement a clear and simple written statement that includes: The procedure used to report complaints or grievances, including timelines and accessible reporting formats; Assurance that the complaint may be submitted to someone other than the individual named in the complaint; Assurance that retaliation will not be tolerated; An opportunity for the child, youth, family member, custodian or staff member to present his or her version of events and to present witnesses; A process for informing the complainant of the results; A process for appeal; Contact information for the licensing authority; and Contact information for the State-designated protection and advocacy system.	C	Client Orientation Handbook
512 A Residential Treatment Program shall ensure that upon placement, each child/youth is asked if he/she has any physical complaints and is checked for obvious signs of illness, fever, rashes, bruises and injury. The results of this interview shall be documented and kept in the child/youth's record.	C	
513 Depending on the age, gender and needs of the child/youth an inventory and/or search of a child/youth's belongings as part of the admission process activity will be conducted by a same gender staff person as the child/youth being admitted and in the child/youth's presence.	C	Health Screening upon admission. Found in Intake Procedure
514 A Residential Treatment Program shall obtain the written informed consent of a child or youth, their parent(s) and custodian before the child or youth is photographed and/or recorded for research and/or program publicity purposes.	C	
515 A Residential Treatment Program shall assign a staff member to orient the child/youth and his/her parent(s) and custodian, to life at the program; including a verbal review of emergency evacuation procedures, the child/youth's rights and program expectations.	C	Client Orientation Handbook
516 A Residential Treatment Program shall make available to each child/youth, parent(s), and custodian, a simply written list of rules and expectations governing children/youth's behavior.	C	
517 The program will inform the child/youth, parent(s) and custodian of the policies and procedures regarding the use of restraint and seclusion. While this orientation will include the following content, the mode of delivery is dependent on the population served. Explanation of de-escalation techniques staff members may employ to defuse the situation in an attempt to avoid the use of restraint or seclusion; Description of situations and criteria for the use of restraint or seclusion; Who is authorized to approve and initiate the use of restraint or seclusion; A description of the restraint techniques authorized for use; A viewing of rooms used for seclusion; The protocol for the monitoring of the child/youth's health and well-being during the restraint, including time frames; The protocol for supervision and monitoring of the child/youth's health and well-being while secluded, including time frames; The decision-making process used by staff for the discontinuation of the use of restraint or seclusion; The internal grievance procedure to report inappropriate use restraint or seclusion; and Contact information for the Licensing Authority.	C	Client Orientation Handbook
518 A Residential Treatment Program will obtain written acknowledgement from the child/youth, parent(s) and custodian that they have been informed of the program's policies and procedures regarding the use of restraint and seclusion.	C	
519 A Residential Treatment Program that uses restraint or seclusion shall offer the child/youth, parent(s) and custodian the opportunity to provide information about the child/youth that may help prevent the use of restraint and seclusion.	C	
520 A Residential Treatment Program shall gather and assess the following information to develop an individualized de-escalation plan for each child/youth to avoid the use of restraint and seclusion. The child/youth's history of violence; The child/youth's history of suicidal ideation or attempts; Events that may trigger aggressive or suicidal behavior; Techniques to regain control, self regulate, self-sooth	C	

that have been successful in the past; Preexisting medical conditions or physical disabilities that place the child/youth at increased risk of harm, and History of trauma that places the child/youth at increased risk of psychological harm if he/she is restrained or secluded.		
PLAN OF CARE		
521 A Residential Treatment Program shall develop a Plan of Care based on the review of the referral information and input from the referral source, the child/youth, parent(s) and custodian within seven days.	C	
522 The Plan of Care shall include: Reason for Admission, Preliminary Goals and Objectives; Services/Interventions to be provided, by whom, and frequency; How progress will be measured; Family contact and level of involvement; Mental Health status; Physical Health status; Social Skills; Family relationships; Recreation/Activities/Interests; Education; Activities of daily living/Independent living skills; De-escalation Intervention Plan; Plan for discharge; Aftercare planning.	C	
523 Plans of Care shall be signed by the administrator of the program (or designee).	C	
524 A Residential Treatment Program shall demonstrate child/youth, parental and custodial participate in the development of the Plan of Care.	C	
525 A Residential Treatment Program shall review and revise the Plan of Care at least once every 90 days and shall evaluate the degree to which the goals have been achieved, identify successful interventions, progress toward discharge planning and recommendations.	C	Woodside has addressed prior concerns and come into compliance with this regulation.
526 A Residential Treatment Program shall ensure that the Plan of Care and subsequent revisions are explained to the child/youth, his/her parent(s) and custodian in language understandable to everyone.	C	
527 The current Plan of Care shall be available upon request at the time of discharge.	C	
600 RESIDENTIAL LIFE		
SUPERVISION		
601 A Residential Treatment Program shall provide adequate supervision appropriate to the treatment and developmental needs of children/youth.	C	
602 A Residential Treatment Program shall ensure that each child/youth has ready access to a responsible staff member throughout the night.	C	
603 A Residential Treatment Program shall provide adequate overnight supervision consistent with the needs of the children/youth.	C	
FAMILY INVOLVEMENT		
604 A Residential Treatment Program shall make every possible effort to facilitate opportunities for children/youth to communicate with parent(s), siblings, and custodian to foster permanent relationships with family, in accordance with the Plan of Care.	C	Woodside has addressed prior concerns and come into compliance.
605 Alternative visiting hours shall be provided for families who are unable to visit at the prescribed times, consistent with the Plan of Care.	C	
606 A Residential Treatment Program shall not use family contact as an incentive to elicit desired behavior; likewise family contact shall not be withheld as a consequence for misbehavior.	C	
607 A Residential Treatment Program shall have written procedures for overnight visits outside the program which includes; The child/youth's location; Length of stay; Plan for transportation; Plan for conveying medication; Discussion of medication regime; Recommendations for supervision; Name, address and contact information for person responsible for the child/youth while they are away from the program; Relationship to the person responsible for the child/youth; Plan for the unforeseen return of the child/youth, and Documentation of above activities.	C	
608 A Residential Treatment Program shall not place a child/youth in a foster home unless the Residential Treatment Program is also a licensed Child Placing Agency.	C	
EDUCATION		
609 A Residential Treatment Program shall ensure that every child/youth is provided an appropriate educational program in accordance with state law and approved by the Vermont Department of Education.	C	While not an "Approved Independent School" Woodside follows the Independent School Guide, Rule 4500, & Performance Based Standards
DAILY ROUTINE		
610 A Residential Treatment Program shall follow a written daily routine, including weekends and vacations.	C	
611 Daily routines shall not conflict with the implementation of a child/youth's Plan of Care.	C	
COMMUNICATION AND PRIVACY		
612 A Residential Treatment Program shall permit children/youth to send and receive mail, make telephone calls and e-mail, consistent with the Plan of Care.	C	

613 Program staff shall read a child/youth's mail and e-mail or listen in on telephone conversations only with the child/youth's full knowledge and understanding of the reasons for this action, consistent with the Plan of Care.	C	
614 A Residential Treatment Program shall not bar contact between a child/youth and their parent(s), custodian, attorney, *guardian ad litem*, clergy and State-designated protection and advocacy system.	C	Woodside has addressed prior concerns and come into compliance.
615 When the right of a child/youth to communicate in any manner with any person outside the program must be curtailed, or monitored a residential program shall: Document the decision, including who was involved in the decision making process, reasons for limitations of his/her right to communicate with the specified individual(s); Inform the child/youth of the decision making process; Review this decision minimally at each review of the Plan of Care.	C	Client Orientation Handbook
MONEY/FINES		
616 A Residential Treatment Program shall permit children/youth to access his/her own money consistent with his/her Plan of Care.	C	
617 Fines shall not be levied except in accordance with a written Program Description which includes a description of how revenues from fines are used for the benefit of the children/youth residing in the program.	C	
CHORES		
618 The Residential Treatment Program may assign chores that provide for the development of life skills and not used as punishment.	C	
619 Children/youth participation in chores shall not be a substitute for housekeeping and maintenance staff.	C	
RELIGION		
620 A Residential Treatment Program with religious affiliation(s) or expectations for participation shall include such information in the program description.	C	
621 A Residential Treatment Program shall make every effort to accommodate a child/youth's desire to attend and/or participate in religious activities and services in accordance with his/her own faith.	C	
PERSONAL BELONGINGS		
622 A Residential Treatment Program shall ensure that children/youth have his/her own adequate, clean, and appropriate clothing.	C	EXEMPT - See Regulation 906
623 A Residential Treatment Program shall allow children/youth to bring his/her personal belongings to the program e.g. comfort items, memorabilia.	C	
624 Limitations on the quantity of personal items shall be discussed during the referral/admission process.	C	
625 Provisions shall be made for the protection of children/youth's personal property.	C	
626 Any search of a child/youth's personal belongings for contraband deemed necessary for the safety of the child/youth or others within the program will be conducted in the presence of the child/youth, by same gender staff as the child/youth unless contraindicated and documented.	C	
PERSONAL CARE AND HYGIENE		
627 A Residential Treatment Program shall ensure children/youth receive guidance in healthy personal care and hygiene habits.	C	
FOOD SERVICES		
628 A Residential Treatment Program shall ensure that a child/youth are provided at least three nutritional meals, available daily at regular times.	C	
629 There shall be no more than 14 hours between the evening meal and breakfast, unless nutritional snacks are offered during the evening.	C	
630 No child/youth in a Residential Treatment Program shall be denied a meal for any reason, except by a documented doctor's order.	C	
631 No child/youth shall be required to eat anything they do not want to eat, nor there be consequences for food preferences.	C	
632 Special dietary needs shall be discussed during the referral/intake process and the Residential Treatment Program shall make healthy accommodations for children/youth with special dietary needs.	C	
MEDICAL CARE		
633 A Residential Treatment Program shall ensure a routine physical examination by a medical practitioner for each child/youth within 30 days of admission unless the child/youth received such an examination within 12 months prior to admission.	C	
634 A Residential Treatment Program shall have written procedures for staff members to follow in case of medical emergencies, including the administration of first aid.	C	
635 A Residential Treatment Program must ensure that children/youth receive timely, competent routine and emergency medical care when they are ill or injured and that		

they continue to receive necessary follow-up medical care with parent(s) and custodians' consent.	C	
636 A Residential Treatment Program shall maintain a cumulative record of medical care. This record shall include: The name of the resident; The reason for the visit; Name and contact information for the provider; Results of examination, tests and recommendations; Medication(s) prescribed; The time and date the medication is administered.	C	
DENTAL CARE		
637 A Residential Treatment Program shall make reasonable effort to ensure each child/youth has had a dental examination by a dentist within 30 days of the child/youth's admission unless the child/youth has been examined within 6 months prior to admission and the program.	C	
638 Residential Treatment Program shall make reasonable effort to ensure children/youth receive timely, competent routine and emergency dental care and that they continue to receive necessary follow-up dental care.	C	
ADMINISTRATION OF MEDICATION		
639 A Residential Treatment Program shall have written policies and procedures governing the use and administration of medication to children/youth.	C	Procedures 405a – 405e
640 Policies and procedures governing the use and administration of medication shall be disseminated to all staff responsible for prescribing and administering medication.	C	
641 These policies shall specify who can administer medication, under what circumstances and procedures for documenting the administration of medication.	C	
642 A Residential Treatment Program shall ascertain all medication a child/youth is taking when coming into care and obtain parental and custodial consent for the administration of medication and any changes in medication(s).	C	
643 Medication will be administered as prescribed by a licensed practitioner.	C	
644 Medication errors shall be documented on an incident report.	C	
PETS		
645 A Residential Treatment Program shall have written policies and procedures address the presence and supervision of pets in the program.	C	
646 A Residential Treatment Program will ensure that the presence of any pet does not have an adverse effect on any child/youth residing in the program, for example allergies or fear.	C	
647 A Residential Treatment Program will maintain a separate record on each pet that includes: Identifying information; Owner(s) contact information; Record of vaccinations; Record of registration; Statement of good health from a Veterinarian; Veterinarian's contact information and; Incidents involving the pet, for example if the pet is abused by a child/youth, or if the pet bites a child/youth or staff member.	C	
BEHAVIOR MANAGEMENT		
648 A Residential Treatment Program shall prohibit all cruel, severe, unusual or unnecessary practices including, but not limited to: Strip searches; Body cavity searches; Restraints that impede a child/youth's ability to breathe or communicate; Chemical restraint; Mechanical restraint; Pain inducement to obtain compliance; Hyperextension of joints; Peer restraints; Locked buildings, rooms, closets, boxes, recreation areas or other structures from which a child/youth cannot readily exit; Discipline or punishment which is intended to frighten or humiliate a child/youth; Requiring or forcing a child/youth to take an uncomfortable position, such as squatting or bending, or requiring or forcing the child/youth to repeat physical movements; Spanking, hitting, shaking, or otherwise engaging in aggressive physical contact (horseplay) with a child/youth; Physical exercises such as running laps or performing push-ups; Excessive denial of on-grounds program services or denial of any essential program services; Depriving a child/youth of meals, water, rest, or opportunity for toileting; Denial of shelter, clothing, or bedding; Withholding of personal interaction, emotional response or stimulation; Exclusion of the child/youth from entry to the residence; Any act defined as abuse or neglect by 33 V.S.A., Chapter 28, §4912.	**C***	Woodside is exempt from the following elements of this regulation: Strip Searches, Mechanical Restraints, and the use of locked buildings, rooms, recreation area. See 900 Series instead. RLSI notes that Woodside has been training staff to use pain compliance techniques and is currently modifying the training curriculum to remove all pain compliance techniques.
649 A Residential Treatment Program shall ensure that behavior management is not delegated to persons who are not known to the child/youth.	C	
PHYSICAL RESTRAINT		
650 A Residential Treatment Program shall not use any form of restraint without prior approval of the Licensing Authority.	C	
651 Restraint shall be used only to ensure that immediate safety of the child/youth or others when no less restrictive intervention has been, or is likely to be, effective in averting danger. Restraint shall be used only as a last resort.	C	Woodside has addressed prior concerns and come into compliance.
652 Any restraint lasting more than 10 minutes requires supervisory consultation, approval and oversight.	C	

653 Any restraint lasting more that 30 minutes requires clinical/administrative consultation, approval and oversight.	C	
654 Restraint shall never be used for coercion, retaliation, humiliation, as a threat of punishment or a form of discipline, in lieu of adequate staffing, for staff convenience, or for property damage not involving imminent danger.	C	Woodside has addressed prior concerns and come into compliance.
655 A Residential Treatment Program shall develop and implement written policies and procedure that govern the circumstances in which restraint is used. These policies and procedures shall contain and address the following: The threshold for initiating restraint; Forms of restraint that are permitted; Staff members authorized and qualified to order or apply restraint; Procedures for monitoring the child/youth placed in restraint for signs of discomfort and medical issues; Time limitations on the use of restraint; The immediate and continuous review of the decision to restrain; Documentation of the use of restraint; Record keeping of incidents of restraint; Debriefing with the child/youth; Debriefing with all witnesses; Debriefing staff; Notification of parent(s) and custodian; and Administrative review of all restraints.	C	FSD Policy 177
656 Incidents of restraint shall be reported to the parent(s) and the person legally responsible for the child/youth as soon as possible, and not later than 24 hours.	C	
657 Incidents of restraint which result in injury to a child/youth or staff member, requiring medical attention shall be reported in writing to the Licensing Authority as soon as possible, and not later than 24 hours.	C	
SECLUSION		
658 A Residential Treatment Program shall not use any form of seclusion without prior approval of the Licensing Authority.	C*	The policy defining and guiding the use of the Intensive Stabilization Unit continues to be under revision since the fall of 2014. Aside from the absence of finalized policy, Woodside has addressed most of the prior concerns and has come into compliance with these regulations.
659 Seclusion shall be used only to ensure that immediate safety of the child/youth or others when no less restrictive intervention has been, or is likely to be, effective in averting danger.	C	
660 Children/youth in seclusion will be provided constant, uninterrupted supervision by qualified staff, employed by the program and familiar to the child/youth.	C	
661 Seclusion lasting more than 10 minutes requires supervisory approval and oversight.	C	
662 Seclusion lasting more that 30 minutes requires clinical/administrative consultation, approval and oversight.	C	
663 Seclusion shall never be use for coercion, retaliation, humiliation, as a threat of punishment or a form of discipline, in lieu of adequate staffing, or for staff convenience.	C	
664 A Residential Treatment Program shall develop and implement a written policies and procedures that govern the circumstances in which seclusion is used. These policies and procedures shall contain and address the following: Circumstances under which seclusion may be used; Staff members authorized to approve the use of seclusion; Procedures for monitoring children/youth in seclusion; Time limitations on the use of seclusion; The immediate and continuous review of the decision to use seclusion; Documentation of the use of seclusion; Record keeping of incidents of seclusion; Debriefing with the child/youth; Debriefing with all witnesses; Debriefing staff; Notification of parent(s) and custodian; and Administrative review of all restraints and follow up actions taken.	C	
665 Incidents of seclusion shall be reported to the parent(s) and person legally responsible for the child/youth as soon as possible, and not later than within 24 hours.	C	
666 Incidents of seclusion which result in injury to a child/youth or staff member, requiring medical attention shall be reported in writing to the Licensing Authority as soon as possible, and not later than within 24 hours.	C	
DOCUMENTATION		
667 Each incident of restraint and seclusion shall be documented separately by staff members directly involved in the intervention as soon as possible, not later than 24 hours.	C	
668 This incident report written by the staff members shall include: Name, age, height, weight, gender and race of the child/youth; Date, beginning and ending time of occurrence; A description of what happened; including what activity the child/youth was engaged in prior to the escalation, the precipitating events; Description of de-escalation and less intrusive methods of intervention used and reasons for their use; Supervisory, clinical and/or administrative notification and approval; Staff involved, including full names, titles, relationship to the child/youth and if a restraint, date of most recent formal de-escalation and restraint training; Witnesses to the precipitating incident and subsequent restraint or seclusion; Preventative actions that may be taken in the future; Name of person making the report; Detailed description of any injury to the child/youth; Detailed description of any injury to staff members; Any action taken by the program as a result of any injury.	C	
669 Incident Reports shall be reviewed and signed by the supervisor/administrator within 8 hours. Documentation of the administrative review must include follow up actions which may include: Debriefing with child/youth; Debriefing with witnesses;	C	

Debriefing with staff; Medical needs; Identified need for additional training; or Personnel action (if warranted).		
RESTRAINT AND SECLUSION MONITORING		
670 A Residential Treatment Program will establish documentation and monitoring systems, enabling all incidents of restraint and seclusion to receive administrative review. The data and management systems will have the potential to monitor staff, individual, and critical programmatic involvement in incidents. The program shall track the following: Shift; Location; Day of the week; Time of day/night Incident antecedents; Length child/youth was held in restraint or seclusion; Type of restraint or seclusion; Age; Gender; Ethnicity; Number of incidents per child/youth; Staff members involved; Child/youth injuries requiring medical attention; and Staff injuries requiring medical attention.	C	
700 PHYSICAL ENVIRONMENT AND SAFETY		
GENERAL		
701 A Residential Treatment Program, including all structures and property shall be constructed, furnished, equipped, used and maintained so that the privacy, safety, health and physical comfort of all children/youth are ensured and in compliance with federal, state, local and municipal regulations.	C	Woodside has addressed prior concerns and come into compliance.
702 A Residential Treatment Program shall pass and maintain documentation of an annual inspection of all buildings utilized by the program by an independent, qualified fire safety inspector.	C	07/18/2016, VT Department of Public Safety, Division of Fire Safety
703 A Residential Treatment Program shall have a designated space to allow private discussions and counseling sessions between individual children/youth and their family members, visitors and staff.	C	
704 First Aid supplies shall be accessible in each living unit of a Residential Treatment Program.	C	
705 A Residential Treatment Program shall keep medication, cleaning supplies and other potentially harmful materials securely locked. Keys to such storage spaces shall be available only to authorized employees.	C	
706 A Residential Treatment Program shall ensure that there are sufficient and appropriate storage facilities.	C	
707 Each separate living unit within a Residential Treatment Program shall have 24-hour telephone service.	C	
708 A Residential Treatment Program shall not permit any firearm or chemical weapon on the property, including program and employee vehicles.	C	
709 A Residential Treatment Program shall ensure that children/youth are not exposed to second hand smoke in the facility, on the property or in program vehicles used to transport children/youth.	C	
710 Facility and staff vehicles shall be locked while on the property.	C	
711 A responsible adult will provide continuous and uninterrupted supervision when children/youth are swimming or otherwise engaged in water sports/activities.	C	
712 On-ground pools shall be enclosed and regularly tested to ensure that the pool is free of contamination.	C	
713 A Residential Treatment Program shall have written procedures for employees and children/youth to follow in case of emergency or disaster.	C	
714 A Residential Treatment Program shall conduct actual or simulated evacuation drills at least monthly and varied by shift. A record of such emergency drills shall be maintained including the date and time of the drill and whether evacuation was actual or simulated. All personnel in the building shall participate in emergency drills. The Residential Treatment Program shall make and document special provisions for the evacuation of any developmentally or physically disabled children/youth from the program.	C	
715 A Residential Treatment Program shall ensure that children/youth are properly secured and adequately supervised in any vehicle used by the program to transport children/youth.	C	
716 A Residential Treatment Program shall maintain, update and share with parent(s), custodians and the Licensing Authority the contact information of a specific individual to contact in the event of the emergency evacuation of children/youth.	C	
SLEEPING AREAS		
717 A Residential Treatment Program shall ensure that all sleeping areas used by children/youth are of sufficient size to allow for a bed and to afford space for dressing and quiet activities.	C	
718 No child/youth's bedroom shall be stripped of its contents and used for seclusion.	C	
719 A Residential Treatment Program shall ensure that no room without a window shall be used as a bedroom.	C	
720 A Residential Treatment Program shall not permit more than four children/youth	C	

to occupy a designated sleeping area or bedroom space.		
721 A Residential Treatment Program will assign roommates taking into account gender, age, developmental and treatment needs.	C	
722 Each child/youth residing in a Residential Treatment Program shall have his/her own bed.	C	
723 A Residential Treatment Program shall ensure that there is sufficient space between a mattress and another mattress (bunk bed) or ceiling for each occupant to sit up comfortably in bed.	C	
724 A Residential Treatment Program shall provide each child/youth with his/her own dresser or other adequate storage space in his/her bedroom unless there is a documented safety concern.	C	
725 The use of open flames shall not be allowed in sleeping areas of a Residential Treatment Program.	C	
TOILET, SHOWER AND BATHING FACILITIES		
726 A Residential Treatment Program shall have available to children/youth a minimum of one wash basin with hot and cold water, one flush toilet and one bath or shower with hot and cold water for every six children/youth.	C	
727 A Residential Treatment Program shall provide toilets and baths or showers which allow for individual privacy unless a child/youth requires assistance.	C	
728 A Residential Treatment Program shall have bathrooms with doors which can be opened from both sides.	C	
729 A Residential Treatment Program serving a co-ed population shall ensure private toileting, shower and bathing facilities.	C	
KITCHEN/DINING AREA		
730 A Residential Treatment Program shall have a sufficiently well-equipped kitchen to prepare meals for the children, youth and employees.	C	
731 A Residential Treatment Program shall be arranged and equipped so children, youth and employees can have their meals together.	C	
LIVING ROOM		
732 A Residential Treatment Program shall have a living room/common area where children/youth may gather for reading, study, relaxation, conversation and entertainment.	C	
SECLUSION ROOMS		
733 A Residential Treatment Program shall ensure all rooms used for seclusion meet all applicable state and local fire and safety codes.	C	
734 A Residential Treatment Program shall ensure all rooms used for seclusion are safe, clean, and well-maintained.	C	
735 A Residential Treatment Program shall ensure all rooms used for seclusion have adequate light, ventilation and maintain an appropriate room temperature.	C	
736 A Residential Treatment Program shall ensure all rooms used for seclusion are designed for continuous supervision.	C	
EMPLOYEE SPACE		
737 A Residential Treatment Program utilizing live-in employees shall provide adequate and separate living space for these employees.	C	
738 A Residential Treatment Program shall provide office spaced which is distinct from children/youth's living areas.	C	
ADDITIONAL REGULATIONS FOR SECURE FACILITIES		
901 Orientation and on-going training shall include; Security procedures; Trauma informed use of mechanical restraint; Trauma informed execution of strip search.	C	
902 During the admission process, a child/youth shall be offered the opportunity to call his/her parent(s).	C	
903 Admitting staff shall conduct a search of the child/youth and his/her possessions upon admission. Written policies and procedures regarding searches upon admission shall be consistent with the following provisions: All searches shall be of the least intrusive type necessary to satisfy the safety and security needs of the facility or the safety of the child/youth and not as a form of punishment. All searches shall only be conducted by same gender staff of the child/youth. A pat search is the standard method of searching children/youth upon admission.	C	
904 Strip searches upon admission are authorized (but not required) when there is reasonable suspicion that a child/youth has on his/her person contraband, weapons, or other items concealed which present a threat to the safety and security of the facility. Reasonable suspicion is determined on an individualized basis and shall be deemed present when: Current charges involve a crime of violence; or Current charges involve use of a weapon; or Current charges are drug related; or The child/youth's prior history includes arrest, charges or convictions of the above.	C	Variance granted to include "There is evidence of current self-harming or suicidal ideation."
905 Mechanical Restraints shall only be used by the program to bring a child/youth	C	Variance granted 12/15.

into the facility, when exiting the facility, and off the premises while in the custody of the facility.		
906 A Secure Residential Treatment Program shall ensure that children/youth have clean and appropriate clothing.	C	Dress Code

COMMENTS:

Since repurposing Woodside as a Psychiatric Residential Treatment Facility, Woodside has been tasked with the substantial challenge of transforming a juvenile detention facility into a treatment-focused care institution that still retains the responsibility of secure and safe detention of adjudicated youth. During the previous review, the clear majority of those interviewed (program staff, contracted employees, residents, parents, and social workers) expressed opinions and experiences that indicate an imbalance between the therapeutic and detention functions of the program. (see prior report for detail). But even though the promulgation of new, PRTF-like regulations has not come to fruition, interviews conducted during this licensing visit indicate significant progress has been made during the course of the last year in addressing all areas of concern.

Woodside is found in compliance, but with reservations to Regulation 419, which states, "*A Residential Treatment Program shall conduct, at minimum, an annual performance evaluation based on performance expectations in the context of each employee's' job description and plan for on-going profession development.*"

> All fulltime permanent employees are evaluated within 6 months of initial hire and annually thereafter. RLSI has been told that the State of Vermont, Department of Human Resources does not require performance evaluations of "temps." However, DCF Residential Treatment Program regulations do require an annual evaluation of all employees. Historically, Woodside "temps" have been employed as "temps" for years and this is the "pool" from which new permanent employees are drawn from.

Woodside is found in compliance, but with reservations to Regulation 648, which states, "*A Residential Treatment Program shall prohibit all cruel, severe, unusual or unnecessary practices including, but not limited to: Pain inducement to obtain compliance;* (excerpt from a list of prohibitions)

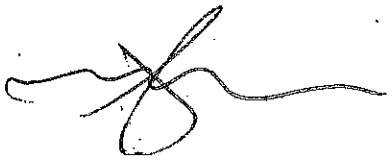
> While participating in restraint training at Woodside, RLSI noted that staff were being trained in pain compliance techniques. Woodside immediately responded and is currently modifying the training curriculum to remove any pain compliance techniques.

Woodside is found in compliance, but with reservations to Regulation 658, which states, *"A Residential Treatment Program shall not use any form of seclusion without prior approval of the Licensing Authority."*

> The policy defining and guiding the use of the Intensive Stabilization Unit continues to be under revision. However, aside from the above policy, Woodside has addressed prior concerns about the frequency and duration of seclusion.

LICENSING RECOMMENDATION:

We recommend that Woodside Juvenile Rehabilitation Center be granted a license, for 30 residents, male and female, age 10-years up to 18-years-old, as a Residential Treatment Program for one year.

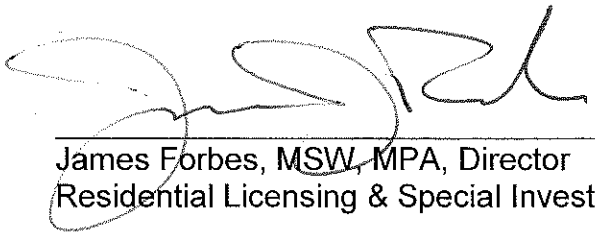


Chris Ward, LICSW, Social Worker
Residential Licensing & Special Investigations

Brenda Dawson Crocket

Brenda Dawson Crocket, MSW, Senior Social Worker
Residential Licensing & Special Investigations

Approved by:



James Forbes, MSW, MPA, Director Date
Residential Licensing & Special Investigations

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, Administrator of The Estate of G.W., R.H., T.W., T.F. D.H., B.C., and A.L. by next friend Norma Labounty, Plaintiffs,	)	
v.	)	Civil Action No. 5:21-CV-00283
KENNETH SCHATZ, KAREN SHEA, CINDY WOLCOTT, BRENDA GOOLEY, JAY SIMONS, ARON STEWARD, MARCUS BUNNELL, JOHN DUBUC, WILLIAM CATHCART, BRYAN SCRUBB, KEVIN HATIN, NICHOLAS WEINER, DAVID MARTINEZ, CAROL RUGGLES, TIME PIETTE, DEVIN ROCHON, AMELIA HARRIMAN, EDWIN DALE, MELANIE D'AMICO, ERIN LONGCHAMP, CHRISTOPHER HAMLIN, and ANTHONY BRICE, all in their individual capacities, Defendants.	)	

CERTIFICATE OF SERVICE

I, Andrew Boxer, counsel of record for the Defendants Kenneth Schatz, Karen Shea, Cindy Wolcott and Brenda Gooley certify that on April 25, 2022, I served *Defendants Schatz, Shea, Walcott and Gooleys' Motion to Dismiss* with the Clerk of the Court using the CM/ECF system. The CM/ECF system will provide service of such filing via Notice of Electronic Filing (NEF) to the following NEF Parties:

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RESPECTFULLY SUBMITTED this 25th day of April, 2022.

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IN THE UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, ADMINISTRATOR
OF THE ESTATE OF G.W., R.H., T.W.,
T.F., D.H., B.C., and A.L., by Next Friend, Norma Labounty,

Plaintiffs

v. **Docket No. 5:21-cv-00283**

KENNETH SCHATZ, KAREN SHEA,
CINDY WOLCOTT, BRENDA GOOLEY,
JAY SIMONS, ARON STEWARD, MARCUS BUNNELL,
JOHN DUBUC, WILLIAM CATHCART,
BRYAN SCRUBB, KEVIN HATIN,
NICHOLAS WEINER, DAVID MARTINEZ,
CAROL RUGGLES, TIM PIETTE,
DEVIN ROCHON, AMELIA HARRIMAN,
EDWIN DALE, MELANIE D'AMICO,
ERIN LONGCHAMP, CHRISTOPHER HAMLIN,
AND ANTHONY BRICE, all in their individual capacities,

Defendants

DEFENDANT JAY SIMONS' MOTION TO DISMISS

Defendant Jay Simons moves pursuant to Federal Rules of Civil Procedure 12(b)(6) to dismiss all counts of Plaintiff's Complaint against him because they fail to state claims for relief as a matter of law.

Argument

Defendant Jay Simons is the former Director of Woodside Juvenile Rehabilitation Center. On April 25, 2022, Defendants Steward and Scrubb moved for dismissal of Counts One, Two, and Three of Plaintiffs' Complaint. The three arguments set forth regarding dismissal of

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Plaintiff's conspiracy claims apply equally to other defendants, including Defendant Simons. These arguments, namely Plaintiffs' failure to sufficiently plead the existence of a conspiracy, failure to allege a classes-based animus and the bar imposed by the intercorporate conspiracy doctrine (given the alleged conspirators all worked for the Vermont Department for Children and Families), serve to support dismissal of these three counts against Defendant Simons. Defendant Simons hereby incorporates these arguments, in full, as if set forth at length herein. These three counts should be dismissed.

Defendants Steward and Scrubb likewise seek dismissal of Counts Eight and Nine of Plaintiffs' Complaint. Their arguments that Plaintiffs' First Amendment claims should be dismissed as inadequately plead applies equally to the other defendants, including Defendant Simons. Defendant Simons hereby incorporates these arguments, in full, as if set forth at length herein. These two counts should be dismissed.

Also on April 25, 2022, Defendants Schatz, Shea, Walcott and Gooley filed a Motion to Dismiss. Their motion provides further support to dismiss the conspiracy and First Amendment claims, addressed above, but also assert, correctly, that qualified immunity shields "Officials," such as Defendant Simons, from personal liability. Likewise, Defendant Simons' exercise of professional judgment in implementing policies at Woodside entitles [him] to good faith immunity barring Plaintiff's Fourteenth Amendment claims (Count Six). Such immunity should preclude the "pendent" common law tort claims as well (Counts Ten, Eleven and Twelve). Defendant Simons agrees with and joins co-defendants' argument that Plaintiff's Eighth Amendment claims must fail since none of the Woodside residents were convicted of any crimes, nor does the Complaint make such an allegation (Counts Four and Five). Defendant Simons

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further agrees with and joins the argument that Plaintiff Estate of G.W.'s claims are barred by Vermont's survival statute because G.W. died prior to the commencement of, and indeed, the pendency of this action. Defendant Simons hereby incorporates Defendants Schatz, Shea, Walcott and Gooley's arguments, in full, as if set forth at length herein.

Finally, the evidence will establish that Defendant Simons had no involvement with Natchez Trace Youth Academy (Count Seven), though his co-defendants' arguments regarding dismissal of the "deliberate indifference" count is well supported.

Conclusion

All claims against Defendant Simons: Counts One, Two, Three, Four, Five, Six, Eight, Nine, Ten, Eleven and Twelve should be dismissed.

Dated at Montpelier, Vermont this 25th day of April, 2022.

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Michael J. Leddy, Esq./Joseph A. Farnham, Esq.
Ian P. Carleton, Esq./Devin T. Mcknight, Esq.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

CATHY WELCH, ADMINISTRATOR OF THE ESTATE OF G.W., R.H., T.W., T.F., D.H., B.C., and A.L., by Next Friend, Norma Labounty,

Plaintiffs

v. **Docket No. 5:21-cv-00283**

KENNETH SCHATZ, et. al.
Defendants

CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2022, I electronically filed **Defendant Jay Simons' Motion to Dismiss** with the Clerk of Court using the CM/ECF system. The CM/ECF system will provide service of such filing via Notice of Electronic Filing (NEF) to the following NEF parties:

Brooks G. McArthur, Esq. and David J. Williams, Esq., Lisa M. Werner, Esq. and Susan J. Flynn, Esq., Bonnie J. Badgewick, Esq., Andrew C. Boxer, Esq., Michael J. Leddy, Esq. and Joseph A. Farnham, Esq., Jon T. Anderson, Esq. and Robin Ober Cooley, Esq., Francesca Bove, Esq. and Andrew H. Maass, Esq., Ian P. Carleton, Esq., and Brooks G. McArthur, Esq. and David J. Williams, Esq.

Dated at Montpelier, Vermont this 25th day of April, 2022.

/s/ Wesley M. Lawrence
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Attorneys for Defendant, Jay Simons

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, Admin. of the Estate of G.W., *et al.*, Plaintiffs	)	Case 5:21-cv-283-gwc
v.	)	**Defendants Christopher Hamlin and Anthony Brice's Motion to Dismiss**
KENNETH SCHATZ, *et al.*, Defendants	)	

Defendants Christopher Hamlin and Anthony Brice (collectively, Hamlin and Brice) move to dismiss the Complaint (Doc. 1) against them. The Complaint fails to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6).

FACTUAL BACKGROUND

On a motion to dismiss under Fed. R. Civ. P. 12(b)(6), a court must accept all "well-pleaded factual allegations" in the complaint as true and construe all reasonable inferences that can be drawn from the complaint in the light most favorable to the Defendants complaint in the light most favorable to the plaintiff. *Lynch v. City of N.Y.*, 952 F.3d 67, 74–75 (2d Cir. 2020). Conclusory allegations, unsupported by factual allegations, are not entitled to the assumption of truth. *Francis v. Kings Park Manor, Inc.*, 992 F.3d 67, 72 (2d Cir. 2021) (*en banc*).

Plaintiffs are or were juveniles "detained" at facilities operated by the Vermont Department for Children and Families (DCF): Woodside Juvenile Rehabilitation Center (Woodside) and the Middlesex Adolescent Center.[1] (Compl. (Doc. 1) pp. 1–2).

[1] The Complaint also refers to the Middlesex facility as the "Middlesex Adolescent Program" or "MAP." (Compl. ¶ 203).

There are seven individual Plaintiffs and 22 individual defendants. (Compl. p. 1). In the 33-page, 297-paragraph Complaint, the only allegations mentioning Defendant Hamlin or Defendant Brice are as follows:

- Hamlin and Brice were employed by DCF at all times relevant to the Complaint. (Compl. ¶¶ 28, 29).
- Plaintiff A.L. is a minor. (Compl. ¶ 7).[2] In 2018, Plaintiff A.L. was in DCF custody and detained at Woodside. (Compl. ¶ 195).
- On April 15, 2020, a video recording captured Defendant Brice shoving Plaintiff A.L. ‘‘with significant force using two hands on [A.L.’s] neck. [A.L.] appears to be pushed into the wall from the force of the shove to the neck.” (Compl. ¶ 204).[3]
- The previous day, Defendant Brice notified Defendant Simons that he ‘‘was feeling anxiety and having difficulty sleeping because of the working conditions at MAP.” (Compl. ¶ 205). Defendant Simons denied Brice’s request to be relieved of duty and was required to complete his shift. (Compl. ¶ 206).
- On June 29, 2020, Plaintiff A.L. “was . . . assaulted”[4] by Woodside/MAP staff, “led by Defendant Hamlin.” (Compl. ¶ 214).[5]

The Complaint fails to allege the personal involvement of Defendant Hamlin or Defendant Brice in constitutional violations or tortious conduct. It thus fails to state a claim against Defendant Hamlin or Defendant Brice. All counts, which identify the rights

[2] A.L. will turn 18 on November 23, 2022. (Compl. ¶ 196). His claims are brought on his behalf by his mother, Norma Labounty, as next friend. (Compl. ¶ 7).

[3] “Significant force” is conclusory and not entitled to the assumption of truth.

[4] “Assaulted” is a legal conclusion that is not entitled to an assumption of truth. *See Siegel v. HSBC N. Am. Holdings, Inc.*, 933 F.3d 217, 222 (2d Cir. 2019) (on motion to dismiss under Fed. R. Civ. P. 12(b)(6), court need not accept conclusory allegations or legal conclusions masquerading as factual conclusions); *Kent v. Katz*, 146 F. Supp. 2d 450, 462 (D. Vt. 2001), aff’d in part, 312 F.3d 568 (2d Cir. 2002) (under Vermont common law, “assault” refers to a civil tort).

[5] The Complaint alleges that during the assault, A.L. “was knocked to the floor, A.L.’s arms were twisted and pulled behind his back, and A.L.’s legs were crossed while his feet were moved up against his buttocks.” (Compl. ¶ 215). The Complaint does not allege that Defendant Hamlin did any of those things.

of "Plaintiffs" that were allegedly violated, merely lump Defendants Hamlin and Brice together with the other 20 "Defendants," a diverse group of individuals running all the way up to DCF's Commissioner. This group pleading requires dismissal. Many counts fail to allege plausible claims under the legal theories cited.

1. Impermissible group pleading and conclusory allegations warrant dismissal.

The Complaint alleges twelve counts. Each count alleges that "Defendants"—apparently all 22 of them—are liable to "Plaintiffs"—apparently all seven of them. (Compl. ¶¶ 221–297). Counts One through Nine, alleging constitutional violations, claim that "Defendants" are liable to "Plaintiffs" for damages under 42 U.S.C. §§ 1983 and 1985.[6] (Compl. ¶¶ 221–280). Counts Ten through Twelve, alleging pendent state-law tort claims, claim that "Plaintiffs" are entitled to compensatory and exemplary damages based on "Defendants'" conduct. (Compl. ¶¶ 283–284, 292, 297).

No count mentions Defendants Hamlin or Brice by name.[7] The specific allegations about Hamlin and Brice are only in the paragraphs cited in the five bullet points above; they allege Hamlin and Brice's interactions with only one Plaintiff, A.L., yet the counts allege that "Defendants"—a class that includes Hamlin and Brice—are liable under *every* theory and to *all* Plaintiffs. This conclusory and vague "group pleading" is insufficient.

A. Pleading standards.

To survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), the well-pleaded factual allegations, which the Court must accept as true for purposes of this motion, and

[6] These counts claim Defendants acted "in violation of" §§ 1983 and 1985. No one can violate those laws; they don't create substantive rights. *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 816 (1985) (§1983); *Great Am. Fed. Sav. & Loan Ass'n v. Novotny*, 442 U.S. 366, 372 (1979) (§1985(3)).

[7] Only Count Seven specifies Defendants, but not Defendant Hamlin or Brice.

reasonable inferences drawn therefrom must state a claim to relief that is plausible on its face. *See Francis*, 992 F.3d at 72 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

"A claim is facially plausible 'when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Whiteside v. Hover-Davis, Inc.*, 995 F.3d 315, 323–24 (2d Cir. 2021) (quoting *Iqbal*, 556 U.S. at 678). A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action" is insufficient. *Iqbal*, 556 U.S. at 678 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (quoting *Twombly*, 550 U.S. at 557).

A complaint must give "each defendant fair notice of what the plaintiff's claim is and the ground upon which it rests." *Wolfe v. Enochian BioSciences Denmark ApS*, 2022 WL 656747, at *13 (D. Vt. Mar. 3, 2022) (quoting *Atuahene v. City of Hartford*, 10 F. App'x 33, 34 (2d Cir. 2001) (summary order) (quotation marks and citations omitted); Fed. R. Civ. P. 8(a)(2). *See also Wolfe*, 2022 WL 656747, at *13 (discussing "shotgun pleadings" which "lump[ ] separate [defendants] together in a conclusory fashion.").

A civil-rights complaint must plead each defendant's personal involvement in the alleged constitutional violation. Vicarious liability does not apply; an individual cannot be held liable for the constitutional violations of others. *Iqbal*, 556 U.S. at 676; *Tangreti v. Bachman*, 983 F.3d 609, 612 (2d Cir. 2020); *Wiley v. Baker*, 2021 WL 2652869, at *5 (D. Vt. Jan. 28, 2021) (nonspecific allegations that rely on group pleading and fail to differentiate which defendant was involved in the alleged unlawful conduct do not state a claim), *report and recommendation adopted*, 2021 WL 2652868 (D. Vt. June 28, 2021).

B. The Complaint does not meet the pleading standards.

The Complaint fails to give Defendants Hamlin and Brice notice of the specific conduct they are accused of, how Plaintiffs believe that alleged conduct supports liability under a specified theory or specified theories,[8] and to which Plaintiff or Plaintiffs they are allegedly liable. Neither Defendant Hamlin nor Defendant Brice is liable for any other Defendant's conduct. The Complaint's failure to allege their personal involvement, its use of "group" or "shotgun" pleading, or its failure give proper notice, requires dismissal.

Every count alleges, in conclusory fashion, that "Defendants" violated "Plaintiffs'" rights or engaged in tortious conduct. But the Complaint lacks the specific factual allegations needed to support the counts.

The Court must dismiss each claim against Defendant Hamlin and each claim against Defendant Brice that is not based on allegations of their specific conduct. *See Wilson v. County of Ulster*, 2022 WL 813958, at *8 (N.D.N.Y. Mar. 17, 2022) (dismissing claims for assault and battery because complaint failed to allege personal involvement of each defendant but instead used impermissible group pleading).[9]

[8] The theory is relevant because Plaintiffs seek attorney's fees under Counts One through Nine, but not under Counts Ten through Twelve.

[9] For example, no specific allegations tie Hamlin or Brice to the claims asserted by G.W.'s estate; estate claims against "Defendants" must be dismissed as to Defendants Hamlin and Brice.

i. CONSPIRACY: Counts One, Two, Three, and Eight must be dismissed. The Complaint does not plausibly allege Defendant Hamlin's or Defendant Brice's personal involvement in a conspiracy.

In four counts,[10] the Complaint alleges that "Defendants" conspired to violate Plaintiffs' constitutional rights. The Complaint lacks specific factual allegations of conspiracy against Defendants Hamlin and Brice.

Plaintiffs allege that the claimed conspiracies are actionable under 42 U.S.C. § 1985. (Compl. ¶¶ 226, 229, 235, 271).

> A conspiracy claim under Section 1985(3) requires a plaintiff to allege: 1) a conspiracy; 2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and 3) an act in furtherance of the conspiracy; 4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States.

Dolan v. Connolly, 794 F.3d 290, 296 (2d Cir. 2015) (quotation marks omitted).

The Complaint had to allege "an agreement—and in particular an agreement to do an unlawful act—between or among two or more separate persons." *See Ziglar v. Abbasi*, 137 S. Ct. 1843, 1867 (2017). That is, "a plausible conspiracy claim requires 'meeting of the minds.'" *Arar v. Ashcroft*, 585 F.3d 559, 569 (2d Cir. 2009). *Accord Webb v. Goord*, 340 F.3d 105, 110 (2d Cir. 2003) (to plead a § 1985 claim, "a plaintiff must provide some factual basis supporting a meeting of the minds, such that defendants entered into an agreement, express or tacit, to achieve the unlawful end.") (quotation marks omitted).

"The conspiracy must also be motivated by some racial or perhaps otherwise class-based, invidious discriminatory animus." *Dolan*, 794 F.3d at 296 (quotation marks omitted). This prevents § 1985(3) from being applied as a "general federal tort law." *Bray*

[10] The counts are: Counts One and Two, alleging conspiracy to violate the Eighth Amendment; Count Three, alleging conspiracy to violate the Fourteenth Amendment; and Count Eight, alleging conspiracy to violate the First Amendment.

v. Alexandria Women's Health Clinic, 506 U.S. 263, 268 (1993). Nonracial motivation must be based on "inherited or immutable characteristics." *Dolan*, 794 F.3d at 296.

A "barebones claim of a conspiracy . . . unaccompanied by any factual allegation to support it" doesn't support a constitutional-conspiracy claim. *Butcher v. Wendt*, 975 F.3d 236, 241 (2d Cir. 2020). *Accord Leon v. Murphy*, 988 F.2d 303, 311 (2d Cir. 1993) (complaint with only "conclusory, vague, or general allegations of conspiracy" does not survive a motion to dismiss.) (quotation marks omitted).

The Complaint does not plausibly allege that Defendant Hamlin or Defendant Brice was personally involved in a conspiracy. The allegations that Defendants "conspired," are insufficient; they are "no more than conclusions," naked assertions devoid of factual enhancement. *See Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 557.

Plaintiffs allege no agreement, no meeting of minds, *see Ziglar*, 137 S.Ct. at 1867; *Arar*, 585 F.3d at 569, and no racial or other class-based, invidious discriminatory animus, i.e., "inherited or immutable characteristics." *See Dolan*, 794 F.3d at 296.

Without plausible specific allegations of a conspiracy under § 1985, *see Dolan*, 794 F.3d at 296, the conspiracy allegations are not entitled to the assumption of truth; they must be disregarded. *See Iqbal*, 556 U.S. at 679 (explaining that allegations that are no more than conclusions are not entitled to the assumption of truth, that legal conclusions must be supported by factual allegations); *Whiteside*, 995 F.3d at 321.

The remaining factual allegations do not plausibly allege the personal involvement of Defendants Hamlin or Brice in an actionable § 1985(3) conspiracy. *See Whiteside*, 995 F.3d at 321 (after disregarding conclusory allegations, analyzing whether remaining allegations "plausibly give rise to an entitlement to relief"); *Dolan*, 794 F.3d at 296.

Since the Complaint lacks a plausible factual basis for the conclusory conspiracy allegations, Counts One, Two, Three, and Eight must be dismissed.

ii. ISOLATION: Counts that allege "Defendants" violated Plaintiffs' rights by isolating them must be dismissed as to Defendants Hamlin and Brice.

In many paragraphs the Complaint refers to the isolation of Plaintiffs in "seclusion cells."[11] Some name a Defendant and others do not. Nowhere does the Complaint specify that Defendant Hamlin or Defendant Brice was personally involved in isolation.

But several counts allege that "Defendants" violated Plaintiffs' rights through isolation.[12] Since the Complaint doesn't allege Defendant Hamlin's or Defendant Brice's personal involvement in the alleged isolation, the group pleading ostensibly including them (*see* footnote 12) must be dismissed against Defendants Hamlin and Brice.

iii. COUNTS SEVEN AND NINE: These allegations are not against Defendant Hamlin or Defendant Brice; they must be dismissed.

Count Seven's heading alleges that "Defendants" were deliberately indifferent to violations of two Plaintiffs' rights, but the specific allegations identify Defendants other than Hamlin and Brice as the alleged perpetrators. (Compl. ¶ 261–266).

Count Nine alleges that "Defendants" violated the First-Amendment rights of Plaintiffs R.H. and T.F. (Compl. ¶ 276). The Complaint specifies no conduct by Hamlin or Brice that would support Count Nine against them. That group pleading requires dismissal. In any event, Plaintiffs fail to plausibly allege a First-Amendment retaliation claim. *See Williams v. Novoa*, 2022 WL 161479, at *6 (S.D.N.Y. Jan. 18, 2022).

[11] *See, e.g.*, Compl. at 1, ¶¶ 36, 37, 39, 40, 41, 46, 47, 50, 54, 56, 69–70, 129–131, 135–139, 152–158, 161–170, 173–180, 186, 226, 229, 235, 241, 251, 260, 282, and 291.

[12] Counts One, Two, Three, Four, Five, Six, Ten, and Eleven.

iv. DEFENDANTS' MENTAL STATES are impermissibly conclusory.

Plaintiffs' allegations of Defendants' mental states are impermissibly conclusory:

- "wanton and willful" conduct, (Compl. ¶¶ 226, 229, 235, 241, 250, 251, 259, 260, 271, 276, 279, 290);
- "malicious," (Compl. ¶¶ 245, 250, 259, 290);
- "reckless," (Compl. ¶¶ 245, 288, 296);
- "callous," (Compl. ¶ 245); and
- "deliberate[ly] indifferen[t]" or "indifferen[t]" (Compl. ¶¶ 245, 250, 259, 279, 290).

See Jang v. Trustees of St. Johnsbury Acad., 331 F. Supp. 3d 312, 351 (D. Vt. 2018) (conclusory allegations that defendants acted "willfully, wantonly, and recklessly" did not plausibly state claim of defamation) *aff'd*, 771 F. App'x 86, 87–88 (2d Cir. 2019).

Since these attributions of Defendants' mental states appear in all counts, and since malice is necessary to impose punitive damages, all counts and all demands for punitive damages must be dismissed.

2. The intracorporate-conspiracy doctrine bars Plaintiffs' conspiracy claims.

Plaintiffs claim that Defendants conspired to violate Plaintiffs' rights under the Eighth, (Compl. ¶¶ 226, 229), Fourteenth, (Compl. ¶ 235), and First Amendments, (Compl. ¶ 271), and that all Defendants were at all relevant times acting in the course of their employment for the State of Vermont Department for Children and Families, (Compl. ¶¶ 8–29). The intracorporate-conspiracy doctrine bars the conspiracy claims.

> The "intracorporate conspiracy doctrine" holds that "because employees acting within the scope of their employment are agents of their employer, an employer and its employees are generally considered to be a single actor, rather than multiple conspirators." *Fed. Ins. Co. v. United States*, 882 F.3d 348, 368 (2d Cir. 2018). The Second Circuit has extended the doctrine "to the context of conspiracies to interfere with civil rights in violation of 42 U.S.C. § 1985." *Id.* at 368 n.14 (citing *Girard v. 94th St. & Fifth Ave. Corp.*, 530 F.2d 66, 70 (2d Cir.

1976)). The doctrine has been held to apply when the entity is a state. *Vega v. Artus*, 610 F. Supp. 2d 185, 205 (N.D.N.Y. 2009).

Stevenson v. New York State Dep't of Corr. & Cmty. Supervision, 2022 WL 179768, at *15 (W.D.N.Y. Jan. 20, 2022) (applying doctrine to dismiss § 1985-conspiracy claims against employees of State of New York); *see also Rudavsky v. City of S. Burlington*, 2018 WL 4639096, at *5–6 (D. Vt. Sept. 27, 2018) (applying doctrine to dismiss § 1985-conspiracy claims against city employees).

The intracorporate-conspiracy doctrine bars Plaintiffs' conspiracy claims—Counts One, Two, Three, and Eight—which must be dismissed.

3. The Eighth Amendment does not apply to Plaintiffs. Even if it did, the Complaint does not state a plausible Eighth-Amendment claim against Defendant Hamlin or Defendant Brice.

In Count One, Plaintiffs allege that Defendants *conspired* to violate the Eighth Amendment's ban on cruel and unusual punishment, (Compl. ¶¶ 221–226) and, in Count Two, its ban on excessive force. (Compl. ¶¶ 227–229). Plaintiffs also allege that Defendants *did violate* those bans. (Compl. ¶¶ 236–241 (Count Four: cruel and unusual punishment); 242–251 (Count Five: excessive force)).

A. The Eighth Amendment does not apply to Plaintiffs. They were not convicted of crimes.

The Eighth Amendment provides, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." "Taken together, these Clauses place 'parallel limitations' on 'the power of those entrusted with the criminal-law function of government.'" *Timbs v. Indiana*, 139 S. Ct. 682, 687 (2019) (citation omitted) (quoting *Ingraham v. Wright*, 430 U.S. 651, 664 (1977)).

The Eighth Amendment protects "those convicted of crimes, and consequently the [Cruel and Unusual Punishment] Clause applies 'only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions.'" *Whitley v. Albers*, 475 U.S. 312, 318 (1986) (quoting *Ingraham*, 430 U.S. at 671 n.40). "The Eighth Amendment protects prisoners from cruel and unusual punishment by prison officials." *Crawford v. Cuomo*, 796 F.3d 252, 256 (2d Cir. 2015).

Applying those principles, the court in *Jackson v. Johnson* ruled that the Eighth Amendment did not apply to a teenager who was adjudicated a juvenile delinquent in a noncriminal proceeding and placed by the family court in the custody of a state official not for punishment, but "to provide guidance and rehabilitation." 118 F. Supp. 2d 278, 286–87 (N.D.N.Y. 2000), *aff'd in part, dismissed in part*, 13 F. App'x 51 (2d Cir. 2001) (summary order). The court reasoned that under New York law, adjudication as a juvenile delinquent "may [not] be denominated a conviction." 118 F.Supp.2d at 287. Since the Eighth Amendment applies only to those convicted of a crime, *see Whitley* and *Ingraham*, it did not apply to the juvenile whose claim was before the court. *Id.*

Similarly, juvenile proceedings in Vermont "are aimed primarily at protecting and rehabilitating youth in trouble. See 33 V.S.A. § 5101(a) (setting forth purposes underlying juvenile proceedings provisions). The legislative policy expressly seeks to rehabilitate juvenile offenders while removing 'the taint of criminality and the consequences of criminal behavior.' 33 V.S.A. § 5101(a)(2)." *In re D.K.*, 2012 VT 23, ¶ 19, 191 Vt. 328, 338–39, 47 A.3d 347, 355.

In Vermont, the family division of the superior court adjudicates juvenile delinquency proceedings. An order of the court in those proceedings is not deemed a

conviction of crime and does not impose any civil disabilities or sanctions ordinarily resulting from a conviction. 33 V.S.A. § 5202(a)(1)(A), (B). At all relevant times prior to Woodside's closure, its mandate was to operate "as a residential treatment facility that provides in-patient psychiatric, mental health, and substance abuse services in a secure setting for adolescents who have been adjudicated or charged with a delinquency or criminal act." 33 V.S.A. § 5801(a) (prior to repeal via 2021, No. 74, § E.327).

Plaintiffs weren't at Woodside for punishment. The Eighth Amendment does not apply to them. Counts One, Two, Four, and Five must be dismissed.

B. The Complaint does not plausibly allege an Eighth Amendment claim.

Even if Plaintiffs were protected by the Eighth Amendment, akin to prisoners, their claims fail; the Complaint does not allege sufficient facts to support the conclusory assertions that Defendants violated their rights under the Eighth Amendment.

To state an Eighth Amendment claim, a plaintiff must allege two elements, one subjective and one objective. First, the subjective element requires a prisoner (assuming Plaintiffs are prisoners) to allege that the defendant "had the necessary level of culpability, shown by actions characterized by 'wantonness'" in light of the surrounding circumstances, which turns on whether the "force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." *Wright v. Goord*, 554 F.3d 255, 268 (2d Cir. 2009) (quotations omitted).

Second, the plaintiff must allege conduct that was objectively harmful enough or sufficiently serious to reach constitutional dimensions. *Crawford*, 796 F.3d at 256. In the prison context, although not "every malevolent touch by a prison guard gives rise to a federal cause of action," the Eighth Amendment proscribes conduct that is "repugnant to

the conscience of mankind," *id*., that is, conduct that is "incompatible with evolving standards of decency" or involves "the unnecessary and wanton infliction of pain." *Id.*

The Complaint does not plead a plausible Eighth Amendment claim. On the subjective element, it alleges wantonness in merely conclusory terms, without supporting details; the Complaint does not address whether Defendants were engaged in "a good-faith effort to maintain or restore discipline." *See Wright*, 554 F.3d at 268.

On the objective element, Plaintiffs allege "no basis to conclude that the alleged use of force was "objectively 'harmful enough' or 'sufficiently serious'" to violate the Eighth Amendment. *See George v. County of Westchester*, 2021 WL 4392485, at *9 (S.D.N.Y. Sept. 24, 2021) (quoting *Crawford*, 796 F.3d at 256).

Without explanation, Plaintiffs allege that a video shows Defendant Brice using his hands on Plaintiff A.L.'s neck and that A.L. "appears to be pushed into the wall from the force of the shove to the neck." (Compl. ¶ 204). This does not describe conduct "repugnant to the conscience of mankind," *see Crawford*, 796 F.3d at 256, nor is it "objectively 'harmful enough' or 'sufficiently serious'" to violate the Eighth Amendment.

In *George*, a prison official went into plaintiff's cell and shoved him against the wall, threatening that if plaintiff did not retract a grievance plaintiff had been pursuing the official would ensure that the prisoner's incarceration would last longer. 2021 WL 4392485, at *2. The court dismissed the Eighth Amendment claim, citing decisions from other courts in this circuit that have found that comparable forceful shoving or pushing of an inmate is insufficient to satisfy the objective prong of an excessive-force claim.

The allegation that Defendant Brice shoved Plaintiff A.L. into a wall does not support the subjective element or the objective element of an Eighth-Amendment claim.

Nor does the Complaint's allegation that Defendant Hamlin "led" other staff members satisfy the subjective or objective elements of an Eighth-Amendment claim.

Since the Complaint does not plausibly allege the subjective or objective elements of an Eighth Amendment claim against Defendant Hamlin or Defendant Brice, Counts One, Two, Four, and Five must be dismissed.

C. The excessive-force counts should be dismissed as redundant.

Counts One and Four are based on the Eighth Amendment's ban on "cruel and unusual punishment. Counts Two and Five allege an Eighth-Amendment "excessive force" claim; they cite the Fourteenth Amendment but Counts One and Four do not. The excessive-force counts are legally indistinguishable from the cruel-and-unusual counts.

The phrase "excessive force" does not appear in the Eighth Amendment. "Excessive force" is a subset of "cruel and unusual punishment." *Crichlow v. Annucci*, 2022 WL 179917, at *17 (N.D.N.Y. Jan. 20, 2022) ("cruel and unusual punishment encompasses the use of excessive force . . .."). The cruel-and-unusual counts subsume the excessive-force counts; they are based on the same facts; they are redundant.

Citing the Fourteenth Amendment does not cure the redundancy. The Eighth Amendment only applies to Defendants, who are state actors, *through* the Fourteenth Amendment. *See McDonald v. City of Chicago*, 561 U.S. 742, 806–07 (2010) (upon ratification in 1791, "the Bill of Rights applied only to the Federal Government."); *Roper v. Simmons*, 543 U.S. 551, 560 (2005) (the Eighth Amendment only applies to state actors through the Fourteenth Amendment, which was ratified in 1868).

Counts Two and Five, alleging excessive force, must be dismissed as redundant. *See* Fed. R. Civ. P. 12(f).

4. Defendants Hamlin and Brice are entitled to qualified immunity.

"[Q]ualified immunity shields federal and state officials from money damages unless the plaintiff pleads facts showing (1) that the official violated a statutory or constitutional right, and (2) that the right was clearly established at the time of the challenged conduct." *Francis v. Fiacco*, 942 F.3d 126, 139 (2d Cir. 2019). The Court may rule on either prong.

For a right to be clearly established, its "contours . . . must be sufficiently clear [such] that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). That is, "[then-]existing precedent must have placed the . . . constitutional question beyond debate," *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011), so that any reasonable official would have "'known for certain'" that the conduct was unlawful under then-existing precedent. *Liberian Cmty. Ass'n of Connecticut v. Lamont*, 970 F.3d 174, 186–87 (2d Cir. 2020) (quoting *Ziglar*, 137 S. Ct. at 1867). Otherwise, the official is immune from suit.

To determine whether a right is clearly established, the Court should look to Supreme Court and Second Circuit precedent existing at the time of the alleged violation. *Vasquez v. Maloney*, 990 F.3d 232, 238 (2d Cir. 2021). The clearly established right must be defined with specificity, not "at a high level of generality." *City of Escondido, Cal. v. Emmons*, 139 S. Ct. 500, 503 (2019).

Because qualified immunity protects officials not merely from liability but from litigation, when possible the issue should be resolved on a motion to dismiss, before the

commencement of discovery, to avoid subjecting public officials to time-consuming and expensive discovery procedures. *Garcia v. Does*, 779 F.3d 84, 97 (2d Cir. 2015).

A. At the relevant time, it was not clearly established that the Eighth Amendment protected Plaintiffs.

Qualified immunity bars Plaintiffs' Eighth Amendment claims. At the time of Defendants' alleged conduct, no Supreme Court or Second Circuit law clearly established that the Eighth Amendment would apply to Plaintiffs under these circumstances. That is still true. Defendants are entitled to qualified immunity from suit on Counts One, Two, Four, and Five, which must be dismissed.

B. At the relevant time, it was not clearly established that Defendants could be liable for conspiring to violate Plaintiffs' constitutional rights.

Qualified immunity bars Plaintiffs' conspiracy counts: Counts One, Two, Three, and Eight. At the time of Defendants' alleged actions, it was not clearly established that the intracorporate-conspiracy doctrine was inapplicable under these circumstances.

In *Ziglar*, 137 S. Ct. at 1868–69, the Court ruled that officials had qualified immunity from suit under § 1985(3) because in late 2001 the intracorporate-conspiracy doctrine's applicability was "sufficiently open" that the defendants "could not be certain that § 1985(3) was applicable to their discussions and actions."

That was still true in April and June 2020. (Compl. ¶ 204, 214). Defendants "could not be certain" that the doctrine did not apply. Defendants have qualified immunity from suit. Counts One, Two, Three, and Eight must be dismissed.

5. The Court should dismiss the pendent state-law claims.

Counts Ten through Twelve assert what Plaintiffs refer to as "pendent" state claims: assault and battery (Count Ten), intentional infliction of emotional distress (Count

Eleven), and grossly negligent and reckless supervision of persons in Defendants' custody and control (Count Twelve).

A. The Court should not exercise jurisdiction over the state-law claims.

Plaintiffs cite no independent jurisdictional basis for the state-law claims. (Compl. ¶ 30).[13] *See* Fed. R. Civ. P. 8(a)(1).[14] Assuming the Court has jurisdiction over the state-law claims under 28 U.S.C. § 1367,[15] which "codifies the court-developed pendent and ancillary jurisdiction doctrines under the label 'supplemental jurisdiction,'" *Artis v. D.C.*, 138 S. Ct. 594, 598 (2018), the Court should decline to exercise that jurisdiction.

"[D]istrict courts may decline to exercise supplemental jurisdiction over a [pendent] claim . . . if . . . (1) the claim raises a novel or complex issue of State law, [or] (3) the district court has dismissed all claims over which it has original jurisdiction . . .." § 1367(c)(3). In those circumstances, a court should consider whether "judicial economy, convenience, fairness, and comity counsel against exercising supplemental jurisdiction." *Catzin v. Thank You & Good Luck Corp.*, 899 F.3d 77, 86 (2d Cir. 2018).

Here, the state-law claims present novel issues of Vermont law. *See* 28 U.S.C. § 1367(c)(1). They would require the Court to apply 12 V.S.A. § 5602, which immunizes State employees from tort liability, except in the case of "gross negligence or willful

[13] As grounds for the Court's jurisdiction, Plaintiffs cite 28 U.S.C. §§ 1331 (federal-question jurisdiction) and 1343(a)(3) (district-court jurisdiction over civil-rights claims).

[14] Rule 8(a)(1) provides, in relevant part, that a complaint must contain "a short and plain statement of the grounds for the court's jurisdiction . . .."

[15] Under § 1367(a), "in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution."

misconduct."[16] *See* Part 5.B. below. And they would require the Court to apply Vermont tort law to a setting the Vermont Supreme Court has not addressed.

The relevant factors identified in *Catzin* weigh in favor of dismissal. Litigation about § 5602 and the cited tort laws in a Vermont court will be more efficient; it will obviate any need for this Court or the Court of Appeals to ask the Vermont Supreme Court to resolve Vermont-law questions.[17] Interests of comity weigh in favor of allowing Vermont courts to decide important issues of Vermont law governing the liability or immunity of State of Vermont employees. *See Boyens v. Anderson*, 2021 WL 5580055, at *3 (D. Vt. Nov. 30, 2021) (citing comity as basis for declining to exercise discretion to decide Vermont common-law claims after dismissing federal claims).

Likewise, if the Court dismisses all the original-jurisdiction claims, *see* 28 U.S.C. § 1367(a), the Court should dismiss the state-law claims. *See* 28 U.S.C. § 1367(c)(3).

B. Plaintiffs' state-law claims are barred by 12 V.S.A. § 5602.

Under Vermont law, a tort claim may not be asserted against an individual state employee unless the employee acted with "gross negligence or willful misconduct"; any action lies exclusively against the State. 12 V.S.A. § 5602(b). *See* footnote 16 (quoting § 5602(a)).

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[16] Section 5602 provides:

> (a) When the act or omission of an employee of the State acting within the scope of employment is believed to have caused damage to property, injury to persons, or death, the exclusive right of action shall lie against the State of Vermont; and no such action may be maintained against the employee or the estate of the employee.
>
> (b) This section does not apply to gross negligence or willful misconduct.
>
> (c) As used in this chapter, "employee" means any person defined as a State employee by 3 V.S.A. § 1101.

[17] *See* L.R. 74 (D. Vt.); V.R.A.P. 14; and L.R. 27.2 (2d Cir.), governing certification.

Plaintiffs' allegations of gross negligence and willful misconduct are conclusory; they are not entitled to the assumption of truth and do not overcome Defendants' immunity under § 5602(a).

C. The Complaint fails to state a state-law claim upon which relief can be granted.

In federal court, federal pleading standards prevail in all civil actions, including those based on state law. *See Tannerite Sports, LLC v. NBCUniversal News Grp.*, 864 F.3d 236, 247 (2d Cir. 2017). Thus, this Court must test Counts Ten through Twelve against the *Twombly-Iqbal* standard. *See id.* Vague and conclusory allegations are not sufficient. *See Wiley*, 2021 WL 2652869, at *4.

i. Count Ten (Assault and Battery), fails to state a plausible claim.

In Count Ten, titled "Assault and Battery," the Complaint alleges, "While Plaintiffs were detained at Woodside and the Middlesex Adolescent Program between 2016 and 2020, Defendants repeatedly placed them in isolation cells in the North Unit and physically assaulted them." (Compl. ¶ 282).

As argued above, page 18, allegations about the placement of Plaintiffs in isolation cells do not apply to Defendant Hamlin or Defendant Brice. That part of Count Ten must be dismissed with respect to Defendants Hamlin and Brice.

In Count Ten, Plaintiffs "repeat and incorporate" paragraphs 1 through 281. (Compl. ¶ 281). Including those incorporated paragraphs, Count Ten does not plausibly state a claim against Hamlin or Brice. The allegations are impermissibly vague and conclusory.

Under Vermont law, battery "is an intentional act that results in harmful contact with another." *Christman v. Davis*, 2005 VT 119, ¶ 6, 179 Vt. 99, 101, 889 A.2d 746, 749. "At common law, the civil tort of assault is defined as any gesture or threat of violence

exhibiting an [intention] to assault, with the means of carrying that threat into effect . . . unless immediate contact is impossible." *MacLeod v. Town of Brattleboro*, 2012 WL 5949787, at *8 (D.Vt. Nov. 28, 2012) (internal quotation marks omitted).

Privilege is a defense to an intentional tort, *see Skaskiw v. Vermont Agency of Agric.*, 2014 VT 133, ¶ 12, 198 Vt. 187, 195, 112 A.3d 1277, 1285 (discussing privilege in defamation law), including assault and battery, *see Crowell v. Kirkpatrick*, 667 F.Supp.2d 391, 417 (D.Vt. 2009) (applying Vermont assault-and-battery law; asking whether police officer's conduct was "reasonably necessary and thereby privileged"), *aff'd*, 400 Fed.Appx. 592 (2d Cir. 2010) (quotation marks omitted). When the complaint alleges an intentional tort under circumstances giving rise to a privilege, the complaint must include allegations that would overcome the privilege. *Skaskiw*, *supra*.

Count Ten alleges that Defendants "physically assaulted" Plaintiffs. (Compl. ¶ 282). By itself, that allegation is a legal conclusion and not entitled to the assumption of truth. *See Kartiganer v. Juab Cty.*, 2012 WL 1906547, at *2 (D. Utah Apr. 6, 2012), *report and recommendation adopted*, 2012 WL 1906531 (D. Utah May 25, 2012). Therefore, Plaintiffs must allege facts sufficient to put each Defendant on notice of *their* specific harmful conduct. *Id. See also Durnell v. Foti*, 2019 WL 5893263, at *2 (E.D. Pa. Nov. 12, 2019) (dismissing battery claim against physician for lack of specificity).

The Complaint alleges that Defendants Hamlin and Brice each had an encounter with one Plaintiff, A.L. Since the Complaint does not allege that Hamlin or Brice had an encounter with any other Plaintiff, the group pleading, (Compl. ¶ 282), that Defendants physically assaulted "Plaintiffs" must be dismissed against Defendants Hamlin and Brice.

The Complaint alleges that A.L. "was assaulted" by Woodside staff, "led" by Defendant Hamlin. (Compl. ¶ 214). During the alleged incident, A.L. "was [allegedly] knocked to the floor, [his] arms were twisted and pulled behind his back, and [his] legs were crossed while his feet were moved up against his buttocks." (Compl. ¶ 215).

The Complaint does not allege that Defendant Hamlin did any of those things. It does not specifically allege how—by what conduct—Defendant Hamlin "led" an "assault" as defined by the above-cited caselaw. The allegation of assault and battery against him is impermissibly vague. The Complaint fails to give Hamlin notice of the basis of his liability for assault and battery; Count Ten must be dismissed against him.

The Complaint alleges that a video recorded Defendant Brice using his hands on Plaintiff A.L.'s neck shoving A.L. with "significant force" and that A.L. "appears to be" "pushed into the wall from the force of the shove to the neck." (Compl. ¶ 204).

This allegation is impermissibly vague. "Significant force" is conclusory. "Appears" to whom? These allegations lack the detail necessary to state a claim for assault and battery. For example, it does not establish that Brice's alleged conduct was not "reasonably necessary and thereby privileged." *See Crowell*, 667 F.Supp.2d at 417.

The context of these allegations against Defendants Hamlin and Brice, the actions of officials responsible for administering a treatment facility for juveniles in the custody of the DCF Commissioner, raises the issue of privilege. *See Chase v. Watson*, 75 Vt. 385, 388, 56 A. 10, 11 (1903) (holding that selectmen with duty to remove obstructions from the highway may use such force as is reasonably necessary for purpose of preventing plaintiff from interfering with removal). The Complaint fails to allege facts overcoming the privilege. *See Skaskiw*, 2014 VT 133, ¶ 12, 198 Vt. at 195, 112 A.3d at 1285.

Since the allegations against Defendant Brice do not plausibly state a claim of assault and battery, Count Ten must be dismissed against him.

ii. Count Eleven, intentional infliction of emotional distress, fails to state a claim.

In Count Eleven, Plaintiffs allege that Defendants are liable for intentional infliction of emotional distress (IIED): they allege that Defendants' conduct "was so outrageous and extreme as to go beyond all possible bounds of decency," (Compl. ¶ 287), and that, "by placing Plaintiffs in isolation cells . . . and by physically assaulting them," Defendants' conduct caused Plaintiffs extreme emotional distress. (Compl. ¶ 291).

The allegations against Defendant Hamlin and Defendant Brice do not state an IIED claim under Vermont law. The Complaint does not allege that Hamlin or Brice was personally involved in isolation or that Hamlin or Brice assaulted "them," i.e., all Plaintiffs. The allegation of "physical assault" is impermissibly conclusory.

A plaintiff alleging IIED under Vermont law carry a "heavy burden." *Davis v. Am. Legion, Dep't of Vermont*, 2014 VT 134, ¶ 20, 198 Vt. 204, 212, 114 A.3d 99, 106. The plaintiff must show defendants engaged in "outrageous conduct, done intentionally or with reckless disregard of the probability of causing emotional distress, resulting in the suffering of extreme emotional distress, actually or proximately caused by the outrageous conduct." *Sheltra v. Smith*, 136 Vt. 472, 476, 392 A.2d 431, 433 (1978).

Plaintiff must show defendants' conduct was "so outrageous in character and so extreme in degree as to go beyond all possible bounds of decent and tolerable conduct in a civilized community and be regarded as atrocious and utterly intolerable." *Dulude v. Fletcher Allen Health Care, Inc.*, 174 Vt. 74, 83, 807 A.2d 390, 397 (2002). Plaintiff

must allege harm that was so severe that no reasonable person could be expected to endure it. *Grega v. Pettengill*, 123 F. Supp. 3d 517, 550 (D. Vt. 2015).

The Complaint does not plausibly allege an IIED claim against Defendant Hamlin or Defendant Brice. It merely attempts to recite the elements of an IIED claim with naked assertions devoid of further factual enhancement, which is insufficient. *See Iqbal*, 556 U.S. at 678. The few specific allegations in the incorporated paragraphs about Defendants Hamlin and Brice do not state an IIED claim against either of them.

The sole allegation against Hamlin, (Compl. ¶ 214), that he "led" Woodside staff in an incident with A.L., fails to meet the "heavy burden" for stating an IIED claim. That vague allegation does not plausibly allege conduct *by him* that meets the objective test for outrageousness or the other elements of an IIED claim under Vermont law.

The sole allegation about Defendant Brice is that he shoved A.L. (Compl. ¶ 204).

Neither of these the alleged interactions was so extreme or outrageous as to give rise to liability under Vermont law. *See Dulude*, 174 Vt. at 83, 807 A.2d at 397.

The Complaint's conclusory allegation of "extreme" emotional distress, (Compl. ¶ 291), does not allege a causal connection to the alleged conduct of either Defendant Hamlin or Defendant Brice. *See Sheltra*, 136 Vt. at 476, 392 A.2d at 433 (IIED claim requires showing of extreme emotional distress resulting from defendant's conduct).

These flaws require dismissal of Count Eleven against Defendants Hamlin and Brice.

iii. Count Twelve, grossly negligent and reckless supervision of persons in their custody and control, fails to state a claim.

Count Twelve alleges that as a result of Defendants' allegedly "grossly negligent and reckless conduct," Defendants breached a duty of care to Plaintiffs. (Compl. ¶ 296). Plaintiffs base this allegation on their argument that "By statute, Defendants were vested

with control, custody, and supervision of Plaintiffs and had a duty to protect Plaintiffs from foreseeable harm." (Compl. ¶ 294).

Contrary to Plaintiffs' argument, Plaintiffs weren't in Defendant Hamlin's or Defendant Brice's control, custody, and supervision. Plaintiffs were in the custody of and under the supervision of the Commissioner for Children and Families. *See* 33 V.S.A. § 5106(3) (duties of Commissioner). To the extent Defendants Hamlin and Brice owed any duty, it was to the Commissioner, not to Plaintiffs. *See Hamill v. Pawtucket Mut. Ins. Co.*, 2005 VT 133, ¶ 13, 179 Vt. 250, 257, 892 A.2d 226, 230.

iv. The Complaint fails to state a claim for punitive damages.

Plaintiffs seek exemplary damages. (Compl. at 33). Punitive damages require a showing of: (1) wrongful conduct that is outrageously reprehensible; and (2) malice. *Fly Fish Vt., Inc. v. Chapin Hill Estates, Inc.*, 2010 VT 33, ¶ 18, 187 Vt. 541, 996 A.2d 1167.

> In Vermont, the culpability required to support an award of punitive damages based on reckless misconduct requires "evidence that the defendant acted, or failed to act, in conscious and deliberate disregard of a known, substantial, and intolerable risk of harm to the plaintiff, with the knowledge that the acts or omissions were substantially certain to result in the threatened harm."

Lewis v. Bellows Falls Congregation of Jehovah's Witnesses, 248 F. Supp. 3d 530, 543 (D. Vt. 2017) (quoting *Fly Fish*, 2010 VT 33, ¶ 25, 187 Vt. at 553, 996 A.2d at 1176).

To make knowing and intentional conduct malicious, plaintiff must show bad motive. That is, there must be more than willful and knowing conduct. *State Agency of Nat. Res. v. Riendeau*, 157 Vt. 615, 625, 603 A.2d 360, 365 (1991).

Plaintiffs do not plausibly allege the elements of a punitive-damages claim under the specified substantive standards or the applicable pleading standards set forth in *Twombly*, *Iqbal*, and their progeny. Their demand for punitive damages must be dismissed.

CONCLUSION

For the reasons stated above, the Court should grant this Motion to Dismiss.

WHEREFORE, Defendants, Christopher Hamlin and Anthony Brice, respectfully request that the court DISMISS the claims against them in this matter.

DATED: April 25, 2022

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CATHY WELCH, ADMINISTRATOR OF THE
ESTATE OF G.W., R.H., T.W., T.F.,
D.H., B.C., and A.L., by next friend Norma Labounty

Plaintiffs, Civil Docket No. 5:21–cv-00283

v.

KENNETH SCHATZ, KAREN SHEA,
CINDY WOLCOTT, BRENDA GOOLEY,
JAY SIMONS, ARON STEWARD, MARCUS BUNNELL,
JOHN DUBUC, WILLIAM CATHCART,
BRYAN SCRUBB, KEVIN HATIN,
NICHOLAS WEINER, DAVID MARTINEZ,
CAROL RUGGLES, TIM PIETTE,
DEVIN ROCHON, AMELIA HARRIMAN,
EDWIN DALE, MELANIE D'AMICO,
ERIN LONGCHAMP, CHRISTOPHER HAMLIN,
and ANTHONY BRICE, all in their individual capacities.

Defendants

DEFENDANT WILLIAM CATHCART'S MOTION TO DISMISS PURSUANT TO F.R.C.P. 12(b)(6)

NOW COMES Defendant WILLIAM CATHCART, by and through counsel, WOODSTOCK LAW, PC, and pursuant to F.R.C.P. 12(b)(6) hereby moves the Court to dismiss all Counts against him, as further detailed below, for failure to state a claim upon which relief can be granted. In furtherance of this Motion to Dismiss, Defendant Cathcart submits the following Memorandum of Law.

INTRODUCTION

This matter stems from claims asserted by, and on behalf of, juveniles detained at the Woodside Juvenile Rehabilitation Center in Essex, Vermont, the Middlesex Adolescent

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Center and Natchez Trace Juvenile Academy between 2016 and 2020. Defendant William Cathcart is identified as a "staff member" in paragraph 17 of The Factual Background section in the Complaint. Neither Defendant Cathcart, nor his role as a staff member is further outlined with any specificity or identified in the entire body of the Complaint. The only other mention of Defendant Cathcart comes in the section entitled: Factual Background T.W. in paragraphs 150 through 158. Of particular importance to this Motion to Dismiss, there is no specific mention of Defendant Cathcart in paragraphs 32 through 118 - sections entitled: Conditions at Woodside, Conditions of Confinement Natchez Trace Juvenile Academy, The Effects of Solitary Confinement on Juveniles and Solitary Confinement in the North Unit, as will be further detailed below. The Complaint lacks the necessary factual matter to even allow this Court to reasonably infer Defendant Cathcart is liable for any misconduct alleged. For the reasons set forth below, the assertions against Defendant Cathcart in the Complaint do not rise to a right to relief above the speculative level, and must be dismissed. ***Bell Atl.Corp. v. Twombly***, 580 U.S. 544, 554 (2007).

MEMORANDUM OF LAW

Defendant Cathcart seeks dismissal of all Counts (One through Twelve) outlined in the Complaint pursuant to F.R.C.P. 12(b)(6), for failure to state a claim upon which relief can be granted. Likewise, F.R.C.P. 8(a)(2), as a provision of general pleading practice, requires the pleader to provide fair notice to the opposing party to enable him to answer and prepare for trial. ***Salahuddin v. Cuomo,*** 861 F.2d 40, 42 (2d Cir. 1980). It is therefore incumbent upon the pleader to assert "a statement clear enough 'to give the Defendant fair notice of what the Plaintiff's claim is and the grounds on which it rests.' " *See*, V.R.C.P. 8 REPORTER'S NOTES

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(quoting ***Conley v. Gibson***, 355 U.S. 41 (1957)). As stated in ***Salahuddin***, the requirement the statement is short as "[u]nnecessary prolixity in a pleading places an unjustified burden on the court and the party who must respond to it because they are forced to select the relevant material from a mass of verbiage." 861 F.2d at 42, citing 5 C. WRIGHT & A. MILLER, *Federal Practice and Procedure* § 1281 at 365 (1969). This Complaint lacks any concise statement of factual allegations which give rise to any reasonable inferences against Defendant Cathcart and therefore give rise to a right to relief to any Plaintiff, pursuant to both F.R.C.P. 8(a)(2), and F.R.C.P. 12(b)(6).

The Complaint itself is quite detailed in factual content. However, as it relates to Defendant William Cathcart, Plaintiffs make no allegations specific to conduct which would give rise to an inference of liability by Defendant Cathcart as it relates to Plaintiffs G.W., R.H., T.F., D.H., B.C., and A.L. For this reason alone all claims against Defendant Cathcart by these Plaintiffs must be dismissed. Defendant Cathcart is without any concise statement of factual allegations, nor the grounds of the claims, against him by any Plaintiff other than T.W.. Defendant Cathcart acknowledges the serious nature of the complaints asserted in Plaintiffs' Complaint, as well as the historical perspective of the Disability Rights injunctive action which illustrated executive policy decisions by some of the administrators of Woodside. This matter stands on different footing as it is a claim for damages by Plaintiffs.

To survive a Motion to Dismiss, a Complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." ***Ashcroft v. Iqbal***, 556 U.S. 662, 678 (2009) (quoting ***Bell Atl. Corp v. Twombly***, 550 U.S. 544, 570 (2007)). To meet this standard, a plaintiff must plead "factual content that allows the court to draw the

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reasonable inference that the defendant is liable for the misconduct alleged." *Id.* *See also* ***Chambers v. Time Warner, Inc.***, 282 F.3d 147, 152 (2d Cir. 2000).

The Court, in evaluating the efficiency of the Complaint, uses a "two pronged approach". ***Hayden v. Paterson***, 594 F.3d 150, 161 (2d Cir. 2010)(quoting ***Ashcroft*** , 556 U.S. at 679). First, legal conclusions are discounted by the Court, as are "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusary statements". ***Ashcroft*** , 556 U.S. at 678. Second, the Court considers whether the factual allegations, taken as true, plausibly give rise to an entitlement to relief. *Id*. This second step is fact-bound, context-specific and the Court is to "draw upon its own judicial experience and common sense." ***Ashcroft*** , 556 U.S. at 679.

The "facial plausibility" standard seeks more than a "sheer possibility that the Defendant has acted unlawfully". ***Ashcroft v. Iqbal***, 556 U.S. at 678 (2009). A Complaint which pleads facts "merely consistent with" a defendant's liability "stops short of the line between possibility and plausibility of entitlement to relief". *Id.* (additional citations omitted). As will be outlined further below, the claims against Defendant Cathcart must be dismissed for failure to state a claim for which relief can be granted, as the Complaint stops short of the line between possibility and plausibility of entitlement to relief.

I. Plaintiffs G.W., R.H., T.F., D.H., B.C. and A.L. have not alleged any facts against Defendant William Cathcart which would allow the Court to infer any misconduct which would give these named Plaintiffs a right to relief accordingly, their respective claims must be dismissed.

Plaintiffs' Complaint does not lack specificity factual, and in fact, is quite detailed. In addition to the usual factual background section, Plaintiffs offer additional detail about the conditions at Woodside, as well as general commentary on the impacts of solitary

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confinement on juveniles. The Complaint also contains specific allegations pertaining to each named Plaintiff. In those sections Plaintiffs outline the history of their time at Woodside, including any physical restraint, seclusion or isolation which occurred during their residency giving rise to the stated legal claims. Plaintiffs reference documentation and named Defendants and their alleged actions or omissions. For example, when detailing A.L.'s claims, the Complaint details the investigation performed by DCF with detail of the alleged regulatory violations. ¶ 207. The alleged Defendants involved are specifically named. ¶¶ 200-202, 204. As noted above, the only factual allegations asserted against Defendant Cathcart are pled in the section pertaining to T.W., in paragraphs 150 through 158. The Court is without any factual content involving actions of Defendant Cathcart beyond those set forth in T.W's section. Given in each Factual Background section specific Defendants and actions are clearly named, where the Complaint is silent as to Defendant Cathcart's actions or involvement the Court is unable to reasonably infer claims giving rise to relief. Moreover, Defendant Cathcart is without any fair notice of the claims against him which would enable him to answer and prepare for trial.

No where in the Factual Background of G.W., R.H., T.F., D.H., B.C., nor A.L., are actions of Defendant Cathcart described. Neither is Defendant Cathcart mentioned in the detailed section describing conditions at Woodside. These Plaintiffs alleged no facts whatsoever that would support any claims against Defendant Cathcart. These Plaintiffs do not state any "statement of circumstances, occurrences, and events in support of the claim presented". See, C. WRIGHT & A. MILLER, *Federal Practice and Procedure* § 1202, at 94-95 (3d ed.2004). There is no statement of a plausible claim against Defendant Cathcart by these

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named Plaintiffs.

Simply identifying Defendant William Cathcart as a "staff member at Woodside Juvenile Rehabilitation Center in Essex" is not enough under the parameters of F.R.C.P. 8(a)(2) and 12(b)(6) to give rise to any reasonable inferences entitling Plaintiffs to relief. For these reasons, any and all claims asserted by Plaintiffs G.W., R.H., T.F., D.H., B.C., and A.L. against Defendant Cathcart must be dismissed.

II. Counts One through Three must be dismissed as Plaintiffs offer no factual content regarding the alleged conspiracy which gives rise to a right of relief beyond the speculative level.

While not specifically stated in the Complaint, the allegations pursuant to 42 U.S.C.A. § 1985 would fall under Section Three: Depriving persons of rights or privileges. To state a claim under § 1985(3), a plaintiff must allege: (1) a conspiracy; (2) for the purpose of depriving a person or class of persons of the equal protection of the laws, or the equal privileges and immunities under the laws; (3) an overt act in furtherance of the conspiracy; and (4) an injury to the plaintiff's person or property, or a deprivation of a right or privilege of a citizen of the United States. ***Thomas v. Roach***, 165 F.3d 137, 146 (2d Cir.1999). A conspiracy is an agreement between two or more individuals where one acts in furtherance of the objective of the conspiracy and each member has knowledge of the nature and scope of the agreement. ***Dove v. Fordam University***, 56 F.Supp.2d 330, 333 (New York 1999).

Section 1985 provides a statutory remedy where a plaintiff can prove a conspiracy to violate his/her civil rights. The statute applies to individuals as well as to state actors. ***Traggis v. St. Barbara's Greek Orthodox Church***, 851 F.2d 584, 586–87 (2d Cir.1988); ***Vertical Broad., Inc. v. Town of Southampton***, 84 F.Supp.2d 379, 389 (E.D.N.Y.2000). The statute

43 Lincoln Corners Way,
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does not create any substantive rights, but rather provides a remedy for the deprivation of rights guaranteed by the United States Constitution. ***Great Am. Fed. Sav. & Loan v. Novotny***, 442 U.S. 366, 372 (1979).

Plaintiffs' Complaint states nothing more than that Defendants "conspired to unlawfully isolate ... physically restrain ... and engaged in wanton and willful conduct". ¶¶ 226, 229 and 235. These allegations are set forth in Counts One, Two and Three. The legal claims in these three counts are the same as those set forth in Counts Four, Five and Six, without the allegation of "conspiracy". Thus, for purposes of this Motion this section addresses dismissal of the claims arising from the "conspiracy" and further substantive arguments as to the underlying legal claims are discussed in the sections below for Counts Four, Five and Six.

The Complaint fails on its face to identify the elements necessary for conspiracy. Moreover, the Complaint fails to make any factual allegations which would support an inference that any Defendants had any agreement or objective to deprive Plaintiffs of constitutional rights. This is particularly true as it relates to Defendant Cathcart, who is not mentioned in any factual statement other than paragraphs 17 and 154. The Complaint itself offers no well pled facts to permit the Court to infer more than the mere possibility of misconduct as it relates to "conspiracy" outlined in Counts One through Three.

As it relates to Plaintiff T.W., the Complaint alleges T.W. "was repeatedly and unlawfully placed in a seclusion cell in the so-called "North Unit" and "repeatedly and unlawfully subjected to painful physical restraints." ¶ 151. Citing to Woodside Orders in the months of February, March and May 2018, Plaintiffs assert Defendants Simons and Steward

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"issued these unlawful orders". ¶ 153. Plaintiffs assert these incident reports indicate Defendants Bunnell, Cathcart and Dubuc "requested and/or received and carried out the orders to unlawfully place T.W. in a North Unit isolation cell or physically restrain her." ¶ 154. There is nothing about these factual allegations, as it relates to T.W., which tend to show an agreement and concerted action by Defendants. Plaintiffs have pled no "details of time and place and the alleged effect of the conspiracy." 2A MOORE'S FEDERAL PRACTICE ¶ 8.17[6], at 8–109 to 8–110 (2d ed. 1992). There is no mention of any agreement between defendants, nor any discussion or actions which would allow the court to infer an agreement, much less an agreement to deprive any Plaintiff their Constitutional rights. "Diffuse and expansive allegations are insufficient, unless amplified by specific instances of misconduct." ***Ostrer v. Aronwald***, 567 F.2d 551, 553 (1977). Here, there are no allegations of specific misconduct by Defendant Cathcart.

In order to maintain an action under §1985, a plaintiff "must provide some factual basis supporting a meeting of the minds, such that defendants entered into an agreement, express or tacit, to achieve the unlawful end." ***Romer v. Morgenthau***, 119 F.Supp.2d 346, 363 (S.D.N.Y.2000). Conclusory allegations that a defendant conspired to violate a plaintiff's civil rights are not sufficient to make out a §1985 claim. ***Walker v. Jastremski***, 430 F.3d 560, 564 n. 5 (2d Cir.2005), cert. denied, 547 U.S. 1101 (2006); ***Boddie v. Schnieder***, 105 F.3d 857, 862 (2d Cir.1997); ***Koulkina v. City of New York***, 559 F.Supp.2d 300, 318 (S.D.N.Y.2008). As stated by the Court in ***Bell Atlantic Corp. v. Twombly***:

> Asking for plausible grounds to infer an agreement does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of an illegal agreement.

43 Lincoln Corners Way,
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550 U.S. at 556.

See, ***In re Elevator Antitrust Litigation***, 502 F.3d 47, 50 (2d Cir.2007) ("We affirm the district court's dismissal of the conspiracy claims because plaintiffs are unable to allege facts that would provide plausible grounds to infer an [unlawful] agreement" among the defendants).

There are no facts alleged in the subject Complaint which would support a reasonable inference there was the necessary "meeting of the minds" such that the Defendants "entered into an agreement" of any nature to achieve the alleged unlawful end of restraint or seclusion nor the unlawful end of constitutional violations. The statements outlined in paragraphs 151, 153 and 154 do not amount to even conclusory allegations of conspiracy. There is no factual allegation of any agreement between Defendant Cathcart and any individual which offers a reasonable inference of furthering an objective related to the conspiracy. Likewise, there is no factual allegation with which the Court could reasonably infer Defendant Cathcart had knowledge of the nature and scope of the agreement. ***Thomas v. Roach***, 165 F.3d 137, 146 (2d. Cir. 1999), *see* ***Dove***, 56 F.Supp.2d at 337. Counts One through Three alleging conspiracy by Defendant Cathcart must be dismissed.

As it relates to Defendant Cathcart, beyond paragraphs 150-158, there are no other factual assertions supporting any involvement of Defendant Cathcart in conspiring to "unlawfully isolate... physically restrain..[or] engage in wanton and willful conduct." There are no further facts - not even conclusory ones - asserted by any Plaintiff other than T.W. against Defendant Cathcart which this Court could reasonably infer he is responsible for the alleged misconduct in Counts One through Three stating claims arising from a "conspiracy".

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