In the absence of any factual allegations to support such a claim, Plaintiffs' conspiracy claims must be dismissed. As the Plaintiffs have pled no factual assertions which would give rise to a factual plausibility of any conspiracy between Defendant Cathcart and any Defendant, Counts One through Three must be dismissed for failure to state a claim upon which relief can be granted.

III. Plaintiffs fail to allege facts supportive of the claims set forth in Count Four as the Eighth Amendment is not applicable as it relates to any assertions against Defendant Cathcart such that Count IV must be dismissed.

Plaintiffs assert the Defendants were "vested with control over the custody and care of Plaintiffs", in this case juveniles. ¶ 239. This Count must be dismissed as it relates to Defendant Cathcart as the Eighth Amendment is inapplicable in this case as these juveniles were being held in noncriminal custody. The only mention of any "adjudication" in the Complaint is asserted in the claims by B.C. in paragraph 184. There are no factual allegations against Defendant Cathcart as set forth in B.C.'s claims, and her claims are ripe for dismissal as outlined in Section I. For all other Plaintiffs there is no assertion of criminal custody, rather juvenile detention; accordingly, the Eighth Amendment claims do not give rise to any right of relief on the part of Plaintiffs as to Defendant Cathcart.

The Eighth Amendment "was designed to protect 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 v. Wright***, 430 US. 651, 671 n. 40 (1977). Generally, "juveniles", when they are held, are held in noncriminal custody; they are persons civilly committed without the full panoply of

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protections attendant upon a criminal trial." ***Pena v. New York State Div. For Youth***, 419 F.Supp. 203, 206 (S.D.N.Y. 1976). Similarly, placement in the custody of state services such as Woodside is not meant as punishment, but rather, to provide guidance and rehabilitation. *See* ***Kent v. United States***, 383 U.S. 541, 554 (1966); ***Pena***, 419 F.Supp. at 206.

Therefore, the Eighth Amendment ban on cruel and unusual punishment is inapplicable in this case. Plaintiffs' claims of violation pursuant to the Eighth Amendment are legally deficient on their face and must be dismissed.

Moreover, as it relates to the factual assertions against Defendant Cathcart, the only reference to Defendant Cathcart's specific actions and any named Plaintiff is set forth in ¶¶ 150-158. Therefore, to the extent there is an assertion of "cruel and unusual punishment" as to Plaintiffs G.W., R.H, T.F., D.H., B.C. and A.L., there is no "sufficient factual matter" as it relates to Defendant Cathcart in which to draw a reasonable inference of liability, and dismissal at the pleading stage is warranted.

IV. Plaintiffs in Count Five allege no facts specific to Defendant Cathcart which would give rise to a reasonable inference he violated the Eighth Amendment and Fourteenth Amendment's ban on the use of excessive force, pursuant to 42 U.S.C. §1983 thus dismissal is required.

As noted above, Plaintiffs' claim of a violation of the Eighth Amendment is not supported as Plaintiffs were held in juvenile custody and the Eighth Amendment is inapplicable. ***Jackson v. Johnson***, 118 F.Supp.2d 278 (2000).

The due process clause of the Fourteenth Amendment includes an individual's freedom from unreasonable bodily restraint. ***Youngberg v. Romeo***, 457 U.S. 307, 316 (1982). This applies to excessive force claims brought under the Fourteenth Amendment. ***Hudson v. McMillan***, 503 U.S. 1(1992); ***United States v. Walsh***, 194 F.3d 37, 48 (2d Cir. 1999). The

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core inquiry by the Court is "whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." ***Hudson***, 503 at 7. This inquiry includes a determination of several factors: "[T]he need for application of force, the relationship between that need and the amount of force used, the threat 'reasonably perceived by the responsible officials,' and 'any efforts made to temper the severity of a forceful response.' " *Id*. (quoting ***Whitley v. Alberts***, 475 U.S. 312, 321 (1986)). The extent of injury is another factor to consider which "may suggest 'whether the use of force could plausibly have been thought necessary' in a particular situation, 'or instead evinced such wantonness with respect to the unjustified infliction of harm as is tantamount to a knowing willingness that it occur.' " *Id*. (quoting ***Whitley***, 475 U.S. at 321, 106 S.Ct. 1078). Excessive force claims must show "conscience-shocking" action by the Defendant. ***Johnson v. Newburgh Enlarged School Dist.***, 239 F.3d 246, 252 (2d Cir. 2001). Where the assertions of the use of force by Defendants were "de minimis, necessary, appropriate, and benign," a claim of excessive force under the Fourteenth Amendment should not stand. *Id*. Specific actions pled as "unprovoked pushing, punching, and kicking", verbal abuse, violent pushing, and distinct physical injury are absent in this Complaint, and not pled by Plaintiff T.W., nor are they alleged against Defendant Cathcart. *See* ***D. K. v. L.K. Teams***, 260 F.Supp.3d 334, 355-357 (S.D. New York 2017)(offering specific detail as to staff actions against residents which gave rise to claims of excessive force which shocked the conscience).

In this case, excessive force is pled as seclusion, isolation and physical restraint which shocked the conscience. ¶ 251. Plaintiffs specifically allege:

> ¶ 43. Under the direction of Defendant Simons, Woodside staff members, including Defendants Weiner, Martinez and Rochon, would

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> apply rotational pressure to the 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.

The Complaint also specifically details the potential risk of harmful results from isolation and seclusion as general commentary by an expert. In the isolation and seclusion context in the Complaint, there is solely mention of Plaintiff G.W..

Defendant Cathcart is not asserted to be involved with any other Plaintiff in the Complaint beyond T.W. This includes the factual background, conditions of Woodside and specific claims by Plaintiffs' sections of the Complaint. The bare reference to Defendant William Cathcart is in paragraph 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.

The Plaintiffs further acknowledge that the North Unit would be utilized for those detainees who engaged in "disruptive, aggressive or self-harming behaviors". ¶ 37. Plaintiff T.W. asserts placement in isolation, or use of physical restraint after Woodside Orders for Restraint/Seclusion arising from her behavior at Woodside issued. There is no discussion of the behavior which resulted in seclusion, restraint or isolation. Plaintiff T.W. does not allege the specifics of physical restraint, nor placement in isolation by Defendant Cathcart, but asserts time and again such restraint, seclusion and isolation was "wrongful".

At best, the Court is left with Plaintiff T.W.'s assertion in paragraph 67 which states:

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> 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 restrains violated Regulation 651; and Woodside's failure to monitor T.W. when she was placed in a North Unit Seclusion cell violated Relation 660.

The assertions of T.W. are made without any specific reference to either the actions and behaviors which resulted in the restraint and seclusion, nor is there an assertion of injury resulting. To the contrary, the Complaint asserts the compliance techniques used "can result in hyperextended joints", though no such report of injury is made specific to T.W.. See ¶ 157. Assuming this pled fact is properly attributable to Defendant Cathcart, Plaintiff T.W. does not allege facts which would reasonably allow this Court to infer Defendant Cathcart acted "maliciously or sadistically" with the design of causing harm to T.W.. ***Johnson v. Glick***, 481 F.2d 1028, 1033 (2d Cir. 1973), *partially abrogated on other grounds by* ***Graham v. Connor***, 490 U.S. 386 (1989). No Plaintiffs asserts conduct by Defendant Cathcart which could possibly be construed as "power arbitrarily and oppressively exercised." ***Daniels v. Williams***, 474 U.S. 327, 331 (1986). There are no facts alleged which support Defendant Cathcart used force in a manner that was objectively unreasonable.

Accepting Plaintiffs' factual allegations as true, there is no plausible claim for relief beyond the mere possibility of misconduct by Defendant Cathcart as it relates to the claims for Constitutional violations of excessive force and "conscience-shocking" behavior. Count Five must be dismissed for failure to state a claim upon which relief can be granted.

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V. Plaintiffs have alleged no facts against Defendant Cathcart in Count Six which would allow the Court to reasonably infer a Constitutional violation of any Plaintiffs' life, liberty or property without due process, thus this Count must be dismissed.

To allege a substantive due process claim, there must be allegation of the deprivation of a "fundamental liberty interest". ***Santosky v. Kramer***, 455 U.S. 745, 753 (1982). Due process is violated only when the conduct can be characterized as "arbitrary, or conscience shocking, in a constitutional sense." ***Edrei v. Maguire***, 892 F.3d 525, 536 (2d Cir. 2018). "[P]urposeful, knowing or (perhaps) reckless action that uses an objectively unreasonable degree of force *is* conscience shocking." ***Edrei***, 892 F.3d at 536. Section 1983 provides redress for a deprivation of federally protected rights by persons acting under color of state law. 42 U.S.C. § 1983. To prevail on a § 1983 claim, a plaintiff must establish (1) the violation of a right, privilege, or immunity secured by the Constitution or laws of the United States; and (2) by a person acting under the color of state law. ***West v. Atkins***, 487 U.S. 42, 48 (1988); ***Flagg Bros., Inc., v. Brooks***, 436 U.S. 149, 155–56 (1978). When sued in his individual capacity the defendant must be personally involved in the claimed violation. "To proximately cause a ... due process violation ... a defendant must be personally involved in the violation." ***Warren v. Pataki***, 823 F.3d 125, 136 (2d Cir. 2016) . Plaintiff must plead and prove "that each Government-official defendant, through the official's own individual actions, has violated the Constitution." ***Iqbal***, 556 U.S. at 676. The only factual allegations against Defendant Cathcart and his actions and/or omissions arise from allegations made by T.W..

Plaintiffs in this Count assert Defendants "confined, restrained, treated, and punished" them, and that such actions were "excessive, done with actual malice toward Plaintiffs, and with willful and wanton indifference to, and deliberate disregard for human life and the

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constitutional rights of Plaintiffs." ¶¶ 257, 259. This Count is again presumed to arise from the allegation of confinement and physical or bodily restraint as a violation of Plaintiffs' liberty interests. As in this case, the residents of Woodside are confined by the State and their ability to act on their own behalf is limited. The Constitution requires Vermont meet the basic needs of safety, treatment and care. ***Langley v. Coughlin***, 715 F.Supp. 522, 539 (S.D.N.Y. 1989). These interests "are not absolute; indeed to some extent they are in conflict." ***Youngberg***, 457 U.S. at 319-320. Woodside qualifies as that "institution" in which "it is necessary for the State to restrain the movement of residents - for example, to protect them as well as others from violence." ***Youngberg***, 457 U.S. 320. Further, such detainees cannot be "punished" but any restrictions on liberty must be reasonably related to "legitimate government objectives and not tantamount to punishment." ***Youngberg***, 457 U.S. at 320 , citing ***Bell v. Wolfish***, 441 U.S. 520 (1979). ***Youngberg***, which dealt with an involuntarily committed adult, highlighted the necessary balance between the legitimate interests of the State and the individual's rights noting:

> The Constitution only requires that the courts make certain that professional judgment in fact was exercised. It is not appropriate for the courts to specify which of several professionally acceptable choices should have been made. ***Youngberg***, 457 U.S. at 323 (citing [the lower court]).

The decisions by the professionals, here Defendant Cathcart, are presumed to be valid. Liability is imposed only:

> When the decision by the professional is such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment.

Youngberg, 457 U.S. at 323.

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Plaintiffs have not specifically alleged actions by Defendant Cathcart which would indicate a substantive departure from accepted professional judgment, practice or standards. Plaintiffs have not alleged Defendant Cathcart, by his own individual actions, has violated the Constitution, nor their constitutionally protected interests. Certainly, the Plaintiffs' Complaint is without any conduct that can be characterized as arbitrary or conscience shocking. ***Edrei***, *supra*.

Plaintiffs assert Defendant Simons introduced a use-of-force system to the staff at Woodside. ¶ 42. Plaintiffs do not specifically state Defendant Cathcart utilized, or was even personally involved, this use-of-force system on any Plaintiff resulting in injury or damage. ¶¶ 43-44, 155-158. Plaintiffs complain the noted use-of-force system was "contrary to national standards and Vermont law". ¶ 45. Plaintiffs do not allege facts, nor factual content, which would allow the Court to infer professional judgment in the application of this use-of-force system was not exercised. Nor do Plaintiffs assert facts which would allow the Court to conclude Defendant Cathcart utilized such use-of-force system as "punishment". Similarly, Plaintiffs assert isolation and seclusion, in certain circumstances was "inappropriate". ¶ 76. While the use of this system and isolation/seclusion may have been "contrary" to national standards, there are no facts alleged with which the Court can infer Defendant Cathcart acted in a manner that was a "substantial departure from accepted professional judgment, practice or standards" such that he did not base the decision on such a judgment. ***Youngberg***, 457 U.S. at 323.

In the sole section alleging facts against Defendant Cathcart, Plaintiffs must acknowledge T.W.'s incident reports resulting in restraint and/or isolation/section were due

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solely from the behaviors of T.W. including disruptive, aggressive, or self harming behaviors. ¶ ¶ 37, 154. The need to protect Plaintiffs, including T.W., other juveniles, and staff, is a "legitimate government objective". In the absence of any pled facts which would allow the Court to infer actions taken amount to "punishment" or otherwise "arbitrary" or "conscience-shocking" behavior, Plaintiffs have failed to pled deprivation of a "fundamental liberty interest" and dismissal at the pleading stage is appropriate. Likewise, Plaintiffs fail to allege personal involvement in any action by Defendant Cathcart of such behavior, and dismissal is appropriate pursuant to F.R.C.P. 12(b)(6).

VI. As Plaintiffs make no factual allegations against Defendant Cathcart directly with regard to actions at the Natchez Trace Youth Academy Count Seven must be dismissed.

This Count should be summarily dismissed as it relates to Defendant Cathcart. Paragraphs 261 through 266 mention neither Defendant Cathcart nor actions made by Defendant Cathcart, nor do they pertain to specifically named Plaintiff T.W. to whom alleged wrongdoing by Defendant Cathcart. Accordingly, Count Seven as it relates to Defendant Cathcart should be dismissed. Under the standards of F.R.C.P. 12 (b)(6), Plaintiffs have not alleged any right to relief as against Defendant Cathcart in this Count.

VII. Plaintiffs R.H. and T.F. allege no facts in Counts Eight and Nine which give rise to a right of relief against Defendant Cathcart.

Plaintiffs assert a violation of the First Amendment's Right to Petition the Government for a Redress of Grievances by R.H. and T.F., as well as the same count arising from conspiracy. Nowhere in the Complaint do these Plaintiffs allege facts which would give rise to a right of relief against Defendant Cathcart. See, ¶¶ 132-149 and 171-180. In the absence of specific facts from which the Court can conclude a reasonable inference of a violation of

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rights, there is no legal relief the Court can grant on this claim as it relates to Defendant Cathcart. There is no ability whatsoever for the Court to draw a reasonable inference that Defendant Cathcart was liable for the misconduct alleged. Accordingly, dismissal of these claims is appropriate under F.R.C.P. 12(b)(6).

VIII. Plaintiffs' pendant state claim for assault and battery must be dismissed as there is no factual allegation to support Defendant Cathcart intentionally engaged in physical contact with any Plaintiff.

Plaintiffs assert in this Count assault and battery arising from allegations of placement in isolation in the North Unit and physical assault by Defendants. This Count does not name any specific Plaintiff or Defendant, nor does it specifically detail the "damage" resulting. The tort of assault and battery in Vermont requires a finding of intent. ***Wilson v. Smith***, 144 Vt. 358 (1984). A "battery" is an intentional wrongful physical contact with another person without consent.' " ***Girden v. Sandals Int'l***, 262 F.3d 195, 203 (2d Cir. 2001) (quoting ***United Nat'l Ins. Co. v. Waterfront N.Y. Realty Corp***., 994 F.2d 105, 108 (2d Cir. 1993). "In the civil context, the common meanings of 'assault' and 'battery' subsume all forms of tortious menacing and unwanted touching. ' " ***Girden***, 262 F.3d at 203. (quoting ***United Nat'l Ins. Co.***, 994 F.2d at 108).

Plaintiffs have offered no facts which would give rise to a reasonable inference that Defendant Cathcart acted to intentionally cause physical contact without consent toward any Plaintiff. The only fact alleged by Plaintiffs relates to T.W. and merely states Defendant Cathcart "received and carried out orders to unlawfully place T.W. in a North Unit isolation cell or physically restrain her." ¶ 154. This statement does not permit the Court to infer anything more than a "mere possibility of misconduct", nor does it allow the court to

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reasonably infer the intent needed to satisfy the tort of battery, thus on the face of the Complaint Plaintiffs have failed to show they are entitled to relief. ***Ashcroft v. Iqbal***, 556 U.S. at 679, citing F.R.C.P. 12(b)(6).

IX. Plaintiffs' allegations do not demonstrate intentional outrageous conduct on the part of Defendant Cathcart which would give rise to any reasonable inference of Intentional Infliction of Emotional Distress.

In this Count, Plaintiffs allege Defendant Cathcart "intended to cause emotional distress to Plaintiffs or acted in reckless disregard of the probably of causing emotional distress to Plaintiffs." The elements of an IIED claim are: "(1) conduct that is extreme and outrageous, (2) conduct that is intentional or reckless, and (3) conduct that causes severe emotional distress." ***Thayer v. Herdt***, 155 Vt. 448, 455 (1990). "An IIED claim can be sustained only where the plaintiff demonstrates '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.' " ***Colby v. Umbrella, Inc***., 2008 VT 20, ¶ 10, 184 Vt. 1 (quoting ***Boulton v. CLD Consulting Eng'rs, Inc.***, 175 Vt. 413, 427 (2003)), ***Denton v. Chittenden Bank***, 163 Vt. 62, 66 (1994).

The burden on one asserting the claim to prove outrageous conduct is "a heavy one." ***Denton****,* 163 Vt. at 66. The claimed actor's conduct must be outrageous, atrocious and utterly intolerable. The conduct must be so extreme in degree as to go beyond all possible bounds of decent and tolerable conduct in a civilized community. The standard for outrageousness is objective. Therefore, the alleged conduct must be assessed with an objective standard based on the alleged actions and words, not on what the complaining party personally believed motivated the alleged conduct. ***Cate v. City of Burlington***, 2013 VT 64, ¶ 28 *(emphasis*

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added). The Court determines, as a threshold matter, whether the trier of fact could reasonably find that the alleged conduct was extreme and outrageous. ***Denton***, *supra.*

The Vermont Supreme Court has refused to hold that an Intentional Infliction of Emotional Distress claim can arise from a series of less-than-outrageous acts. See ***Denton*** *supra*; ***Fromson v. State***, 176 Vt. 395, 401 (2004); ***Dulude v. Fletcher Allen Health Care, Inc.***, 174 Vt. 74, 84 (2002). "A string of individually unactionable events cannot be taken together to establish a prima facie case of IIED." ***Fernot v. Crafts Inn***, 895 F.Supp. 668, 684 (D.Vt. 1995). The rationale for this rule, as described in ***Denton***, is that one cannot be on notice as to what in a series of offensive-but-not-outrageous actions crosses a line into the realm of outrage. A party cannot combine a series of events without showing a significant outrageous act. ***Fromson,*** *Id.*

In this case, Plaintiffs allege the "confinement, restraint, treatment and punishment" were so outrageous and extreme as to go beyond all possible bounds of decency. ¶ 287. Further, they allege the Defendants intended to cause or alternatively acted in reckless disregard of the probability of causing emotional distress by repeatedly placing Plaintiffs in insolation and restraining them was "outrageous" to the extent it caused Plaintiffs to suffer from extreme emotional distress. ¶¶ 290-291. They cite to multiple occasions of restraint and seclusion resulting from numerous Woodside Orders. ¶ 152. Thus, Plaintiff T.W. asserts she was "repeatedly and unlawfully" secluded and subject to restraint. ¶ 151. Even assuming this conduct could be identified as "extreme and outrageous", which is denied, the Complaint fails to offer facts of intentional or reckless behavior by Defendant Cathcart such that sever emotional distress resulted. Nor is there any fact asserted which offer any support to an

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assertion that Defendant Cathcart acted with "malice". ¶ 290. In this Count, there is nothing more than a "threadbare recital" of this Count with no "further factual enhancement" offered by Plaintiffs and the claim is without facial plausibility. ***Ashcroft v. Iqbal***, 556 U.S. at 678.

The factual allegations do not give rise to an inference by a reasonable person that the conduct was, in fact, outrageous, nor intentional. There is nothing more than a general allegation, as it relates to Defendant Cathcart, of intentional infliction of emotional distress which is not sufficient to survive a Motion to Dismiss pursuant to F.R.C.P. 12(b)(6).

X. Plaintiffs' claims against Defendant Cathcart do not assert facts which the Court could infer the actions of gross negligence and therefore must be dismissed.

In Count Twelve Plaintiffs allege "grossly negligent and reckless supervision" and a breach of the duty of care owed to Plaintiffs. ¶ 296. Plaintiffs state a duty of care was owed "to ensure their custody was reasonably safe and to detect and correct problems that could cause injury to Plaintiffs." ¶ 295. Gross negligence is negligence that is " 'more than an error of judgment' "; it is the failure to exercise " 'even a slight degree of care,' " owed to another. ***Kane v. Lamothe***, 2007 VT 91, ¶ 12, 182 Vt. 241 (quoting ***Hardingham v. United Counseling Serv. of Bennington Cnty***., 164 Vt. 478, 481 (1995), and ***Mellin v. Flood Brook Union Sch. Dist***., 173 Vt. 202, 220 (2001)). To prove the standard of gross negligence Plaintiffs must offer information and facts to support Defendants actions were a "heedless and palpable violation of the legal duty respecting the rights of others." ***Kane***, 182 Vt. At 248 (quoting ***Shaw, Adm'r v. Moore***, 104 Vt. 529, 531 (1932)). While the finding of gross negligence is usually a jury question, where reasonable people cannot differ, a motion to dismiss can dispose of the issue.

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Plaintiffs Complaint lacks necessary specificity of the actions to which they claim were "grossly negligent" beyond the duty to keep Plaintiffs "reasonably safe" and "detect and correct" problems that could cause injury. ¶ 295. Plaintiffs here will likely point to restraint, seclusion and isolation as thoroughly outlined above, and the claims that the actions of the Defendants, including Defendant Cathcart, fell below nationally recognized standards. ¶ 45. While Plaintiffs might assert Defendant Cathcart could have better responded to behaviors of the detainees, or exercised his discretion differently, they have "failed to set forth a wholesale absence of care or indifference to duty owed" to them which would state a viable claim for gross negligence. ***Kane v. Lamothe***, 182 Vt. at 249.

Plaintiffs Complaint does not offer any factual allegation which would support an inference that Defendant Cathcart failed to exercise "even a slight degree of care" as to any Plaintiff. Moreover, as it relates to Defendant Cathcart and the allegations set forth by Plaintiff T.W., there is nothing more than "a formulaic recitation of the elements of a cause of action", with regard to gross negligence, therefore Plaintiffs fail to state a claim for relief that is plausible on its face. ***Twombly***, 550 U.S. at 555. Conduct alleged by Plaintiffs by Defendant Cathcart here is not even "merely consistent with" liability. *Id*. at 557.

CONCLUSION

To survive a 12(b)(6) Motion to Dismiss, the Complaint must contain "enough facts to state a claim to relief that is plausible on its face." ***Twombly***, 550 U.S. at 570. Plaintiffs' Complaint as it relates to Defendant Cathcart consists of nothing more than "threadbare recitals of a cause of action," "unadorned, the-Defendant-unlawfully-harmed-me-accusation[s]," or naked assertion[s] devoid of 'further factual enhancement.' " ***Ashcroft***, 556

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U.S. at 678. Accordingly, it did not state a plausible claim for relief.

WHEREFORE, Defendant WILLIAM CATHCART respectfully requests this Honorable Court dismiss all claims asserted against him by Plaintiffs and for all such other relief as this Honorable Court deems just and appropriate under the circumstances.

Dated at Woodstock, Vermont this 25th day of April, 2022.

/s/ Bonnie J. Badgewick
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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 25th day of April, 2022, I served the attached **DEFENDANT WILLIAM CATHCART'S MOTION TO DISMISS PURSUANT TO F.R.C.P. 12(b)(6)** 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:*

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Dated at Woodstock, Vermont this 25th day of April, 2022.

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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.	)	

DEFENDANT MARCUS BUNNELL'S MOTION TO DISMISS

NOW COMES Defendant Marcus Bunnell, by and through his attorneys, McNeil, Leddy & Sheahan, P.C., pursuant to Federal Rules of Civil Procedure 8 and 12(b)(6), hereby moving to dismiss all claims against him. Plaintiffs have employed impermissible "group pleading" in their Complaint and have otherwise failed to plausibly state a claim against Defendant Bunnell upon which relief may be granted.

INTRODUCTION

Defendant Bunnell is only mentioned in three paragraphs of Plaintiffs' 297-paragraph Complaint. Plaintiffs allege Defendant Bunnell was among Defendants who "requested and/or received and carried out the orders to unlawfully place T.W. in a North Unit isolation cell or physically restrain her." (Doc. 1 ¶ 154). Plaintiffs also allege that on June 27, 2018, T.F. was restrained by Defendants Bunnell and Piette, and dragged across the floor by her feet to her cell with Bunnell on top of her, and that based on a video recording, "Bunnell appeared angry, agitated, and aggressive." (*Id.* ¶¶ 175, 177). There are no further allegations directed at Defendant Bunnell. Moreover, he is not even mentioned in relation to any claims brought by five of the seven Plaintiffs: Welch, R.H., D.H., B.C., and A.L.

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ARGUMENT

I. STANDARD GOVERNING MOTIONS TO DISMISS

"The standard for reviewing a motion to dismiss pursuant to Rule 12(b)(6) is well-known." *Wyatt v. City of Barre/Barre City Fire Dep't,* 2012 WL 1435708, *2 (D. Vt. 2012). "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) (internal quotation marks omitted). "Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 555 (2007) (citations omitted).

"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." *Amaker v. New York State Dep't of Correctional Services,* 435 Fed. Appx. 52, 54 (2d Cir. 2011) (internal quotation marks omitted). This "plausibility standard . . . is guided by [t]wo working principles." *Harris v. Mills,* 572 F.3d 66, 72 (2d Cir. 2009) (internal quotation marks omitted). Citing *Twombly,* the U.S. Supreme Court explained:

> First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by merely conclusory statements, do not suffice. . . . Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not show[n]—that the pleader is entitled to relief.

Iqbal, 556 U.S. at 678-79 (citations and internal quotation marks omitted). "[W]e do not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible

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on its face." *Twombly,* 550 U.S. at 570. When plaintiffs "have not nudged their claims across the line from conceivable to plausible, their complaint[s] must be dismissed." *Id.*

II. ALL CLAIMS BY PLAINTIFFS WELCH, R.H., D.H., B.C., AND A.L. AGAINST DEFENDANT BUNNELL MUST BE DISMISSED

Plaintiffs' Complaint contains no allegations from Welch, R.H., D.H., B.C. or A.L. against Defendant Bunnell. The "Factual Background" allegations related to each of these Plaintiffs makes no reference to him. For this reason, these Plaintiffs cannot state a plausible claim and these five Plaintiffs' claims should be dismissed as to Defendant Bunnell.

III. PLAINTIFFS' COMPLAINT IS AN IMPROPER "SHOTGUN PLEADING" LACKING SUFFICIENT NOTICE TO DEFENDANT BUNNELL

A complaint under Fed. R. Civ. P. 8 must give each defendant fair notice of the claims asserted against him. *See Simmons v. Abruzzo*, 49 F.3d 83, 86 (2d Cir. 1995). Plaintiffs here have impermissibly relied on group pleading in their Complaint, lumping all Defendants together in each Count except for Count Seven. (Doc. 1, pp. 25-32). Plaintiffs have named 22 individual Defendants. While Plaintiffs' Complaint begins with an introductory paragraph and then sets out 220 paragraphs of allegations, all but one of their 12 causes of action lump all 22 Defendants together, the result being that Defendants have inadequate notice of the specific claims against them. This is an improper "shotgun pleading" containing multiple counts adopting allegations of all preceding counts, replete with conclusory allegations, and asserting multiple claims against multiple Defendants without specifying which Defendant is responsible for which act. *Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1320 (11th Cir. 2015). Defendant Bunnell's inclusion in the group pleading provides him with inadequate notice of the grounds upon which Plaintiffs' claims against him rest, especially given the sparse reference to him in the Complaint. For this reason, Plaintiffs' purported claims against Defendant Bunnell should be dismissed.

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IV. PLAINTIFFS' COUNT SEVEN SHOULD BE DISMISSED AS TO DEFENDANT BUNNELL BECAUSE IT IS NOT DIRECTED AT HIM

While Plaintiffs employ group or "lumped" pleading in most Counts in their Complaint, in Count Seven Plaintiffs specifically name Defendants Schatz, Dale, D'Amico, Longchamp, Harriman, and Wolcott. Plaintiffs do not name Defendant Bunnell and indeed they make no allegations against him regarding the Natchez Trace Youth Academy. Because Count Seven is not directed at Defendant Bunnell, he should be dismissed as to this Count.

V. PLAINTIFFS FAIL TO STATE A PLAUSIBLE CLAIM FOR CONSPIRACY UNDER 42 U.S.C. § 1985 AGAINST DEFENDANT BUNNELL

Plaintiffs state merely conclusory allegations in support of their conspiracy claims under 42 U.S.C. § 1985, set forth in Counts One, Two, Three, and Eight. (Doc. 1, pp. 25-26, 30). They have not alleged any evidence of a concerted plan or agreement between any Defendants, especially Defendant Bunnell, and they have not alleged any facts to suggest, let alone support, an agreement or meeting of the minds among Defendants. For this reason, Plaintiffs' conspiracy claims must be dismissed.

While Plaintiffs do not specifically allege the subsection of 42 U.S.C. § 1985 under which they bring their conspiracy claims, it is assumed for purposes of this Motion that their claim is brought under § 1985(3) regarding an alleged deprivation of rights or privileges. "In order to state a conspiracy claim under 42 U.S.C. § 1985(3), a plaintiff must show: (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; (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." *Cine SK8, Inc. v. Town of Henrietta*, 507 F.3d 778, 791 (2d Cir. 2007) (citation omitted). "A § 1985(3) conspiracy must also

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be motivated by some racial or perhaps otherwise class-based, invidious discriminatory animus behind the conspirators' action." *Id.* (citation omitted). Conclusory, vague, or general allegations of conspiracy to deprive a plaintiff of constitutional rights cannot withstand a motion to dismiss. *Sommer v. Dixon*, 709 F.2d 173, 175 (2d Cir. 1983). Allegations that are vague and unsupported by a description of particular overt facts will not survive a motion to dismiss. *Id.* at 175.

At the pleading stage Plaintiffs must at least assert factual allegations against Defendant Bunnell that plausibly state a claim of § 1985(3) conspiracy. Plaintiffs allege no class-based, invidious discriminatory animus on the part of Defendant Bunnell. The Complaint contains no allegation that Defendant Bunnell came to any agreement with other Defendants or that he acted in furtherance of any conspiracy. For these reasons, Plaintiffs' conspiracy claims in Counts One, Two, Three, and Eight of the Complaint are devoid of any factual support and therefore should be dismissed as to Defendant Bunnell.

VI. PLAINTIFFS' COUNTS FOUR, FIVE, AND SIX, WHICH MAY BE ANALYZED SIMILARLY, NONETHELESS DO NOT STATE A PLAUSBILE CONSTITUTIONAL CLAIM AGAINST DEFENDANT BUNNELL

Plaintiffs' Counts Four, Five, and Six allege constitutional violations under the Eighth and Fourteenth Amendments. Because Plaintiffs in this case were juveniles in non-criminal custody at Woodside, these claims may be similarly analyzed under the Fourteenth Amendment and its due process requirements.

"The Eighth Amendment's prohibition on cruel and unusual punishment 'applies only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions…. [T]he State does not acquire the power to punish with which the Eighth Amendment is concerned until after it has secured a formal adjudication of guilt in accordance with due process of law.'" *G.B. ex rel. T.B. v. Carrion*, No. 09-CV-10582, 2012 WL 13071817,

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*16 n. 27 (S.D.N.Y. Jan. 1, 2012) (quoting *DeShaney v. Winnebago Cty. Dep't of Social Servs.*, 489 U.S. 189, 199 n.6 (1989)). "Therefore, the Eighth Amendment ban on cruel and unusual punishment is inapplicable in this case." *Jackson v. Johnson*, 118 F. Supp. 2d 278, 287 (N.D.N.Y. 2000). As alleged in the Complaint and citing the recently repealed Vermont statute 33 V.S.A. § 5801, DCF's Woodside Juvenile Rehabilitation Center was a facility for "adolescents who have been adjudicated or charged with delinquency or criminal act." (Doc. 1 ¶ 32). Plaintiffs all allege they were detained a Woodside Juvenile Detention Center (Doc. 1 ¶¶ 119, 132, 150, 159, 173, 184, and 195). Under Vermont law, an order of the Family Division of the Superior Court in a juvenile delinquency proceeding shall not be deemed a conviction of a crime or impose any civil disabilities sanctions ordinarily resulting from a conviction. 33 V.S.A. § 5202. Thus, all Plaintiffs were held at Woodside "in non-criminal custody as juveniles." *G.B. ex rel. T.B. v. Carrion*, No. 09-CV-10582, 2012 WL 13071817, *16 (S.D.N.Y. Jan. 1, 2012) (citing analogous New York statute). Therefore, the Eighth Amendment is inapplicable and Plaintiffs' claims regarding their detention at Woodside are properly analyzed under the Fourteenth Amendment's due process requirements. Because Plaintiffs alleged claims under the Fourteenth Amendment (Counts Five and Six), their Eighth Amendment claims in Counts Four and Five are duplicative and should be dismissed.

Plaintiffs' Counts Five and Six do purport to invoke the rights set forth in the Fourteenth Amendment. However, Plaintiffs' vague pleading is insufficient to put Defendant Bunnell on proper notice of a claim against him. The allegations against Defendant Bunnell are too vague and speculative as to plausibly state a constitutional claim against him.

"As to the appropriate standard for reviewing a non-criminal detainee's Fourteenth Amendment due process claim, the Supreme Court has held that such a detainee may establish

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a Fourteenth Amendment violation by showing that the government action at issue was: (1) intended to punish; (2) lacked legitimate purpose; or (3) objectively, was "not 'rationally related to a legitimate nonpunitive governmental purpose' or that the actions 'appear excessive in relation to that purpose.'" *J.S.X. Through D.S.X. v. Foxhoven*, 361 F. Supp. 3d 822, 832-33 (S.D. Iowa 2019) (quoting *Kingsley v. Hendrickson*, 576 U.S. 389, 398 (2015)). Certain "restrictions on liberty" are permissible if they are "reasonably related to legitimate government objectives and not tantamount to punishment." *Id.* (internal quotations omitted). Here, Plaintiffs have failed to show, based on the scant factual allegations directed at Defendant Bunnell, that his actions were "intended to punish" or "lacked legitimate purpose." Because Plaintiffs have not stated sufficient facts against Defendant Bunnell to meet their burden as to the first and second prongs above, their claims under Counts Four, Five, and Six must be dismissed as against Defendant Bunnell.

In the alternative, as discussed below, Defendant Bunnell is entitled to qualified immunity on Plaintiffs' claims under the Eighth and Fourteenth Amendments. Moreover, for the reasons stated above, Plaintiffs' use of group pleading in Counts Four, Five, and Six, lumping all "Defendants" together without any specificity, fails to state a plausible claim against Defendant Bunnell.

VII. PLAINTIFFS FAIL TO STATE A FIRST AMENDMENT CLAIM AGAINST DEFENDANT BUNNELL

Plaintiffs make no allegations against Defendant Bunnell that would invoke the First Amendment as alleged in Plaintiffs' Count Nine. Furthermore, Plaintiffs' group pleading under this Count is again insufficient.

To sufficiently plead their First Amendment retaliation claim, Plaintiffs must show: "(1) [they had] a right protected by the First Amendment; (2) the [Defendants'] actions were

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motivated or substantially caused by [Plaintiffs'] exercise of that right; and (3) the [Defendants'] actions caused [them] some injury." *Dorsett v. County of Nassau,* 732 F.3d 157, 160 (2d Cir. 2013). Plaintiffs allege no facts to indicate that any action by Defendant Bunnell was "motivated or substantially caused" by any Plaintiff's exercise of a First Amendment right. For this reason alone, Plaintiffs have failed to state a plausible claim against Defendant Bunnell under Count Nine.

VIII. PLAINTIFFS DO NOT STATE PLAUSIBLE STATE LAW CLAIMS AGAINST DEFENDANT BUNNELL

Plaintiffs' state law claims (Counts Ten, Eleven, and Twelve) are insufficiently pled as against Defendant Bunnell.

As for Plaintiffs' assault and battery claim in Count Ten, Plaintiffs allege that "Defendants repeatedly placed [Plaintiffs] in isolation cells in the North Unit and physically assaulted them." (Doc. 1 ¶ 282). This generalized allegation lumping all Defendants together is insufficient to state a plausible claim of assault and battery against Defendant Bunnell. Even if Plaintiffs' minimal allegations against Defendant Bunnell specifically were to be deemed sufficient to state a claim for assault and battery, he is nonetheless entitled to qualified immunity as set forth below.

To state their claim for intentional infliction of emotional harm (Count Eleven), Plaintiffs must show "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." *Fromson v. State*, 2004 VT 29, ¶ 14, 176 Vt. 395 (internal quotations omitted); *see also Crowell v. Kirkpatrick*, 667 F. Supp. 2d 391, 416 (D. Vt. 2009). Plaintiffs' burden is a heavy one and requires Plaintiffs to show conduct "so outrageous in character and so extreme in degree as to go beyond all possible bounds of decent

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and tolerable conduct in a civilized community and be regarded as atrocious and utterly intolerable." *Id.* The test for outrageousness is objective and the court makes the initial determination as to whether the alleged conduct satisfies the test. *Id.* at ¶¶ 14-15. Plaintiffs' allegations as to Defendant Bunnell fail this test. Plaintiffs allege that Defendant Bunnell participated in physically restraining T.W., on one occasion restrained T.F. and was on top of her while she was dragged across the floor, and that he "appeared angry, agitated, and aggressive." (Doc. 1 ¶¶ 154, 175, 177). These claims, even accepted as true, are insufficient to satisfy the objective test for outrageous conduct on the part of Defendant Bunnell and Count Eleven against him must be dismissed.

Plaintiffs' state law gross negligence claim fares no better. Plaintiffs, in attempting to circumvent the exclusive right of action provision of the Vermont Tort Claims Act and sue Defendants individually, have overextended themselves in asserting a gross negligence claim against all Defendants indiscriminately. "Gross negligence is negligence that is more than an error of judgment; it is the failure to exercise even a slight degree of care, owed to another." *Kennery v. State*, 2011 VT 121, ¶ 41, 191 Vt. 44 (quotations omitted). Whether conduct rose to the level of gross negligence is typically a question of fact for the jury, but dismissal may be appropriate "only if reasonable minds cannot differ." *Id.* To establish gross negligence, Plaintiffs' must show Defendant Bunnell "heedlessly and palpably violated a legal duty owed to plaintiff." *Amy's Enters. v. Sorrell*, 174 Vt. 623, 624, (2002) (quotation omitted). Factual allegations of a "wholesale absence of care or indifference to duty owed" is required to state a plausible claim for gross negligence. *Kane v. Lamothe*, 2007 VT 91, ¶ 13, 182 Vt. 241. Plaintiffs fail to state sufficient factual allegations against Defendant Bunnell to show any

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purported conduct rose to the level of gross negligence. Defendant Bunnell is also entitled to qualified immunity on this claim.

IX. DEFENDANT BUNNELL IS ENTITLED TO QUALIFIED IMMUNITY

Even if Plaintiffs can plead a constitutional violation, which is not conceded, Defendant Bunnell is nonetheless entitled to qualified immunity if he did not violate clearly established law particularized to the facts of this case. *White v. Pauly*, 580 U.S. __, 137 S. Ct. 548, 552 (2017). Qualified immunity shields government officials "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *McEvoy v. Spencer,* 124 F.3d 92, 97 (2d Cir. 1997). Qualified immunity protects government officials from lawsuits over errors made while reasonably performing their duties, whether resulting from "a mistake of law, a mistake of fact, or a mistake of mixed questions of law and fact." *Pearson v. Callahan,* 555 U.S. 223, 129 (2009).

Qualified immunity is essentially the same under federal and state law. *See Wilkinson v. Russell,* 182 F.3d 89, 97 (2d Cir. 1999) (Sotomayor, J.), *cert. denied,* 528 U.S. 1155 (2000); *Hubacz v. Protzman,* 2013 WL 1386287, *12 (D. Vt. 2013); *Stevens v. Stearns,* 2003 VT 74 ¶ 15, 175 Vt. 428, 434 (2003). "The only significant difference is that '[q]ualified immunity from a state law claim does not contain the "statutory or constitutional rights" limitation because a state law claim is not so limited.'" *Wilkinson,* 182 F.3d at 98 (quoting *Murray v. White,* 155 Vt. 621, 630 n.4 (1991)). Under Vermont law, "lower-level government employees are immune from tort liability when they perform discretionary acts in good faith during the course of their employment and within the scope of their authority." *Hudson v. Town of East Montpelier,* 161 Vt. 168, 171, 638 A.2d 561 (1993). To determine whether a state employee is acting in "good faith," Vermont law relies on the same federal objective standard: whether the

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defendant's conduct violated "clearly established rights ... of which a reasonable person would have known." *Stevens v. Stearns,* 175 Vt. 428, 434 (2003); *see also Murray v. White,* 155 Vt. 621, 630, 587 A.2d 975 (1991) ("Good faith exists where an official's acts did not violate clearly established rights of which the official reasonably should have known."). "Of course, when we consider state tort liability, the 'clearly established law' is not limited to federal constitutional and statutory rights, but may include Vermont statutes, regulations and common law." *Sabia v. Neville,* 165 Vt. 515, 521 (1996).

Plaintiffs cannot state that Defendant Bunnell violated a clearly established right, much less that he was plainly incompetent or knowingly violated the law. Thus, Defendant Bunnell is entitled to dismissal on qualified immunity grounds.

CONCLUSION

WHEREFORE, for the reasons stated above, and the reasons for dismissal set forth in the other Defendants' motions, Defendant Marcus Bunnell respectfully requests that this Court dismiss with prejudice all of Plaintiffs' claims against him and dismiss him as a party to this litigation.

DATED at Burlington, Vermont this 25th day of April 2022.

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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.	)	

CERTIFICATE OF SERVICE

We hereby certify that on April 25, 2022, we electronically filed *Defendant John Dubac's Motion to Dismiss, Defendant Kevin Hatin's Motion to Dismiss* and *Defendant Marcus Bunnell's Motion to Dismiss* with the Clerk of Court using the CM/ECF system which will send notification of such filing to counsel of record in the case.

DATED at Burlington, Vermont this 25th day of April 2022.

McNEIL, LEDDY & SHEAHAN, P.C.

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UNITED STATES DISTRICT COURT
FOR THE
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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.	)	

DEFENDANT JOHN DUBUC'S MOTION TO DISMISS

NOW COMES Defendant John Dubuc, by and through his attorneys, McNeil, Leddy & Sheahan, P.C., pursuant to Federal Rules of Civil Procedure 8 and 12(b)(6), hereby moving to dismiss all claims against him. Plaintiffs have employed impermissible "group pleading" in their Complaint and have otherwise failed to plausibly state a claim against Defendant Dubuc upon which relief may be granted.

INTRODUCTION

Plaintiffs' allegations against Defendant Dubuc are limited. Plaintiffs allege that in 2017 he sent an email regarding a decision that Plaintiff D.H. would benefit from increased support and lower stimulation in a North Unit cell. (Doc. 1 ¶ 129). Plaintiffs allege that on April 17, 2018, Defendant Dubuc let Woodside staff into R.H.'s isolation cell, equipped with a riot shield, and staff "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." (*Id.* ¶ 139). Defendant Dubuc was among Defendants who "requested and/or received and carried out the orders to unlawfully place T.W. in a North Unit isolation cell or physically restrain her." (*Id.*¶ 154). Finally, Plaintiffs allege that

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Dubuc ordered A.L. into the North Unit but later claimed A.L. voluntarily agreed to the decision. (*Id.* ¶ 201). These are the extent of the allegations against Defendant Dubuc. He is not mentioned in any claims brought by three of the seven Plaintiffs: Welch, T.F., and B.C.

ARGUMENT

I. STANDARD GOVERNING MOTIONS TO DISMISS

"The standard for reviewing a motion to dismiss pursuant to Rule 12(b)(6) is well-known." *Wyatt v. City of Barre/Barre City Fire Dep't,* 2012 WL 1435708, *2 (D. Vt. 2012). "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) (internal quotation marks omitted). "Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 555 (2007) (citations omitted).

"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." *Amaker v. New York State Dep't of Correctional Services,* 435 Fed. Appx. 52, 54 (2d Cir. 2011) (internal quotation marks omitted). This "plausibility standard . . . is guided by [t]wo working principles." *Harris v. Mills,* 572 F.3d 66, 72 (2d Cir. 2009) (internal quotation marks omitted). Citing *Twombly,* the U.S. Supreme Court explained:

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II. ALL CLAIMS BY PLAINTIFFS WELCH, T.F., AND B.C. AGAINST DEFENDANT DUBUC MUST BE DISMISSED

Plaintiffs' Complaint contains no allegations from Welch, T.F., or B.C. against Defendant Dubuc. The "Factual Background" allegations related to each of these Plaintiffs makes no reference to Defendant Dubuc. The omission of any reference to Defendant Dubuc in relation to these Plaintiffs is fatal to their claims against him. They cannot state a plausible claim for relief absent any allegation of his personal involvement. For this reason, these Plaintiffs' claims should be dismissed as to Defendant Dubuc.

III. PLAINTIFFS' COMPLAINT IS AN IMPROPER "SHOTGUN PLEADING" LACKING SUFFICIENT NOTICE TO DEFENDANT DUBUC

A complaint under Fed. R. Civ. P. 8 must give each defendant fair notice of the claims asserted against him. *See Simmons v. Abruzzo*, 49 F.3d 83, 86 (2d Cir. 1995). Plaintiffs here have impermissibly relied on group pleading in their Complaint, lumping all Defendants together in each Count except for Count Seven. (Doc. 1, pp. 25-32). Plaintiffs have named 22 individual Defendants. While Plaintiffs' Complaint begins with an introductory paragraph and then sets out 220 paragraphs of allegations, all but one of their 12 causes of action lump all 22 Defendants together, the result being that Defendants have inadequate notice of the specific claims against them. This is an improper "shotgun pleading" containing multiple counts adopting allegations of all preceding counts, replete with conclusory allegations, and asserting multiple claims against multiple Defendants without specifying which Defendant is responsible for which act. *Weiland*

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v. Palm Beach Cty. Sheriff's Office, 792 F.3d 1313, 1320 (11th Cir. 2015). Defendant Dubuc's inclusion in the group pleading provides him with inadequate notice of the grounds upon which Plaintiffs' claims against him rest, especially given the sparse reference to him in the Complaint. For this reason, Plaintiffs' purported claims against Defendant Dubuc should be dismissed, or at the least Plaintiffs should be required to plead a more definite statement of their claims against him.

IV. PLAINTIFFS' COUNT SEVEN SHOULD BE DISMISSED AS TO DEFENDANT DUBUC BECAUSE IT IS NOT DIRECTED AT HIM

While Plaintiffs employ group or "lumped" pleading in most Counts in their Complaint, in Count Seven Plaintiffs specifically name Defendants Schatz, Dale, D'Amico, Longchamp, Harriman, and Wolcott. Plaintiffs do not name Defendant Dubuc and indeed they make no allegations against him regarding the Natchez Trace Youth Academy. Because Count Seven is not directed at Defendant Dubuc, he should be dismissed as to this Count.

V. PLAINTIFFS FAIL TO STATE A PLAUSIBLE CLAIM FOR CONSPIRACY UNDER 42 U.S.C. § 1985 AGAINST DEFENDANT DUBUC

Plaintiffs state merely conclusory allegations in support of their conspiracy claims under 42 U.S.C. § 1985, set forth in Counts One, Two, Three, and Eight. (Doc. 1, pp. 25-26, 30). They have not alleged any evidence of a concerted plan or agreement between any Defendants, especially Defendant Dubuc, and they have not alleged any facts to suggest, let alone support, an agreement or meeting of the minds among Defendants. For this reason, Plaintiffs' conspiracy claims must be dismissed.

While Plaintiffs do not specifically allege the subsection of 42 U.S.C. § 1985 under which they bring their conspiracy claims, it is assumed for purposes of this Motion that their claim is brought under § 1985(3) regarding an alleged deprivation of rights or privileges. "In order to state

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a conspiracy claim under 42 U.S.C. § 1985(3), a plaintiff must show: (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; (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." *Cine SK8, Inc. v. Town of Henrietta*, 507 F.3d 778, 791 (2d Cir. 2007) (citation omitted). "A § 1985(3) conspiracy must also be motivated by some racial or perhaps otherwise class-based, invidious discriminatory animus behind the conspirators' action." *Id.* (citation omitted). Conclusory, vague, or general allegations of conspiracy to deprive a plaintiff of constitutional rights cannot withstand a motion to dismiss. *Sommer v. Dixon*, 709 F.2d 173, 175 (2d Cir. 1983). Allegations that are vague and unsupported by a description of particular overt facts will not survive a motion to dismiss. *Id.* at 175.

At the pleading stage Plaintiffs must at least assert factual allegations against Defendant Dubuc that plausibly state a claim of § 1985(3) conspiracy. Plaintiffs allege no class-based, invidious discriminatory animus on the part of Defendant Dubuc. The Complaint contains no allegation that Defendant Dubuc came to any agreement with other Defendants or that he acted in furtherance of any conspiracy. For these reasons, Plaintiffs' conspiracy claims in Counts One, Two, Three, and Eight of the Complaint are devoid of any factual support and therefore should be dismissed as to Defendant Dubuc.

VI. PLAINTIFFS' COUNTS FOUR, FIVE, AND SIX, WHICH MAY BE ANALYZED SIMILARLY, NONETHELESS DO NOT STATE A PLAUSBILE CONSTITUTIONAL CLAIM AGAINST DEFENDANT DUBUC

Plaintiffs' Counts Four, Five, and Six allege constitutional violations under the Eighth and Fourteenth Amendments. Because Plaintiffs in this case were juveniles in non-criminal custody

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at Woodside, these claims may be similarly analyzed under the Fourteenth Amendment and its due process requirements.

"The Eighth Amendment's prohibition on cruel and unusual punishment 'applies only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions…. [T]he State does not acquire the power to punish with which the Eighth Amendment is concerned until after it has secured a formal adjudication of guilt in accordance with due process of law.'" *G.B. ex rel. T.B. v. Carrion*, No. 09-CV-10582, 2012 WL 13071817, *16 n. 27 (S.D.N.Y. Jan. 1, 2012) (quoting *DeShaney v. Winnebago Cty. Dep't of Social Servs.*, 489 U.S. 189, 199 n.6 (1989)). "Therefore, the Eighth Amendment ban on cruel and unusual punishment is inapplicable in this case." *Jackson v. Johnson*, 118 F. Supp. 2d 278, 287 (N.D.N.Y. 2000). As alleged in the Complaint and citing the recently repealed Vermont statute 33 V.S.A. § 5801, DCF's Woodside Juvenile Rehabilitation Center was a facility for "adolescents who have been adjudicated or charged with delinquency or criminal act." (Doc. 1, ¶ 32). Plaintiffs all allege they were detained a Woodside Juvenile Detention Center (Doc. 1, ¶¶ 119, 132, 150, 159, 173, 184, and 195). Under Vermont law, an order of the Family Division of the Superior Court in a juvenile delinquency proceeding shall not be deemed a conviction of a crime or impose any civil disabilities sanctions ordinarily resulting from a conviction. 33 V.S.A. § 5202. Thus, all Plaintiffs were held at Woodside "in non-criminal custody as juveniles." *G.B. ex rel. T.B. v. Carrion*, No. 09-CV-10582, 2012 WL 13071817, *16 (S.D.N.Y. Jan. 1, 2012) (citing analogous New York statute). Therefore, the Eighth Amendment is inapplicable and Plaintiffs' claims regarding their detention at Woodside are properly analyzed under the Fourteenth Amendment's due process requirements. Because Plaintiffs alleged claims under the

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Fourteenth Amendment (Counts Five and Six), their Eighth Amendment claims in Counts Four and Five are duplicative and should be dismissed.

Plaintiffs' Counts Five and Six do purport to invoke the rights set forth in the Fourteenth Amendment. However, Plaintiffs' vague pleading is insufficient to put Defendant Dubuc on proper notice of a claim against him. The allegations against Defendant Dubuc are too vague and speculative as to plausibly state a constitutional claim against him.

"As to the appropriate standard for reviewing a non-criminal detainee's Fourteenth Amendment due process claim, the Supreme Court has held that such a detainee may establish a Fourteenth Amendment violation by showing that the government action at issue was: (1) intended to punish; (2) lacked legitimate purpose; or (3) objectively, was "not 'rationally related to a legitimate nonpunitive governmental purpose' or that the actions 'appear excessive in relation to that purpose.'" *J.S.X. Through D.S.X. v. Foxhoven*, 361 F. Supp. 3d 822, 832-33 (S.D. Iowa 2019) (quoting *Kingsley v. Hendrickson*, 576 U.S. 389, 398 (2015)). Certain "restrictions on liberty" are permissible if they are "reasonably related to legitimate government objectives and not tantamount to punishment." *Id.* (internal quotations omitted). Here, Plaintiffs have failed to show, based on the scant factual allegations directed at Defendant Dubuc, that his actions were "intended to punish" or "lacked legitimate purpose." Because Plaintiffs have not stated sufficient facts against Defendant Dubuc to meet their burden as to the first and second prongs above, their claims under Counts Four, Five, and Six must be dismissed as against Defendant Dubuc.

In the alternative, as discussed below, Defendant Dubuc is entitled to qualified immunity on Plaintiffs' claims under the Eighth and Fourteenth Amendments. Moreover, for the reasons stated above, Plaintiffs' use of group pleading in Counts Four, Five, and Six, lumping all

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"Defendants" together without any specificity, fails to state a plausible claim against Defendant Dubuc.

VII. PLAINTIFFS FAIL TO STATE A FIRST AMENDMENT CLAIM AGAINST DEFENDANT DUBUC

Plaintiffs make no allegations against Defendant Dubuc that would invoke the First Amendment as alleged in Plaintiffs' Count Nine. Furthermore, Plaintiffs' group pleading under this Count is again insufficient.

To sufficiently plead their First Amendment retaliation claim, Plaintiffs must show: "(1) [they had] a right protected by the First Amendment; (2) the [Defendants'] actions were motivated or substantially caused by [Plaintiffs'] exercise of that right; and (3) the [Defendants'] actions caused [them] some injury." *Dorsett v. County of Nassau,* 732 F.3d 157, 160 (2d Cir. 2013). Plaintiffs allege no facts to indicate that any action by Defendant Dubuc was "motivated or substantially caused" by any Plaintiff's exercise of a First Amendment right. For this reason alone, Plaintiffs have failed to state a plausible claim against Defendant Dubuc under Count Nine.

VIII. PLAINTIFFS DO NOT STATE PLAUSIBLE STATE LAW CLAIMS AGAINST DEFENDANT DUBUC

Plaintiffs' state law claims (Counts Ten, Eleven, and Twelve) are insufficiently pled as against Defendant Dubuc.

As for Plaintiffs' assault and battery claim in Count Ten, Plaintiffs allege that "Defendants repeatedly placed [Plaintiffs] in isolation cells in the North Unit and physically assaulted them." (Doc. 1 ¶ 282). This generalized allegation lumping all Defendants together is insufficient to state a plausible claim of assault and battery against Defendant Dubuc. Even if Plaintiffs' minimal allegations against Defendant Dubuc specifically were to be deemed

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sufficient to state a claim for assault and battery, he is nonetheless entitled to qualified immunity as set forth below.

To state their claim for intentional infliction of emotional harm (Count Eleven), Plaintiffs must show "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." *Fromson v. State*, 2004 VT 29, ¶ 14, 176 Vt. 395 (internal quotations omitted); *see also Crowell v. Kirkpatrick*, 667 F. Supp. 2d 391, 416 (D. Vt. 2009). Plaintiffs' burden is a heavy one and requires Plaintiffs to show conduct "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." *Id.* The test for outrageousness is objective and the court makes the initial determination as to whether the alleged conduct satisfies the test. *Id.* at ¶¶ 14-15. Plaintiffs' allegations as to Defendant Dubuc fail this test. Plaintiffs allege that Defendant Dubuc sent an email about a decision that D.H. would benefit from increased support and lower stimulation in a North Unit cell, that he, along with other staff, entered R.H.'s cell equipped with a riot shield, restrained him, and cut his clothing, that he "requested and/or received and carried out" orders to place T.W. in a North Unit isolation cell or physically restrain her, and that he claimed A.L. "voluntarily" agreed to Dubuc's decision to place A.L. in the North Unit when he ordered A.L. into the North Unit. (Doc. 1 ¶¶ 129, 139, 154, and 201). Plaintiffs have not satisfied the objective test for outrageous conduct on the part of Defendant Dubuc and Count Eleven against him must be dismissed.

Plaintiffs' state law gross negligence claim fares no better. Plaintiffs, in attempting to circumvent the exclusive right of action provision of the Vermont Tort Claims Act and sue

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Defendants individually, have overextended themselves in asserting a gross negligence claim against all Defendants indiscriminately. "Gross negligence is negligence that is more than an error of judgment; it is the failure to exercise even a slight degree of care, owed to another." *Kennery v. State*, 2011 VT 121, ¶ 41, 191 Vt. 44 (quotations omitted). Whether conduct rose to the level of gross negligence is typically a question of fact for the jury, but dismissal may be appropriate "only if reasonable minds cannot differ." *Id.* To establish gross negligence, Plaintiffs' must show Defendant Dubuc "heedlessly and palpably violated a legal duty owed to plaintiff." *Amy's Enters. v. Sorrell*, 174 Vt. 623, 624, (2002) (quotation omitted). Factual allegations of a "wholesale absence of care or indifference to duty owed" is required to state a plausible claim for gross negligence. *Kane v. Lamothe*, 2007 VT 91, ¶ 13, 182 Vt. 241. Plaintiffs fail to state sufficient factual allegations against Defendant Dubuc to show any purported conduct rose to the level of gross negligence. Defendant Dubuc is also entitled to qualified immunity on this claim.

IX. DEFENDANT DUBUC IS ENTITLED TO QUALIFIED IMMUNITY

Even if Plaintiffs' pleading is considered sufficient, Defendant Dubuc is nonetheless entitled to qualified immunity if he did not violate clearly established law particularized to the facts of this case. *White v. Pauly*, 580 U.S. __, 137 S. Ct. 548, 552 (2017). Qualified immunity shields government officials "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *McEvoy v. Spencer,* 124 F.3d 92, 97 (2d Cir. 1997). Qualified immunity protects government officials from lawsuits over errors made while reasonably performing their duties, whether resulting from "a mistake of law, a mistake of fact, or a mistake of mixed questions of law and fact." *Pearson v. Callahan,* 555 U.S. 223, 129 (2009).

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Qualified immunity is essentially the same under federal and state law. *See Wilkinson v. Russell,* 182 F.3d 89, 97 (2d Cir. 1999) (Sotomayor, J.), *cert. denied,* 528 U.S. 1155 (2000); *Hubacz v. Protzman,* 2013 WL 1386287, *12 (D. Vt. 2013); *Stevens v. Stearns,* 2003 VT 74 ¶ 15, 175 Vt. 428, 434 (2003). "The only significant difference is that '[q]ualified immunity from a state law claim does not contain the "statutory or constitutional rights" limitation because a state law claim is not so limited.'" *Wilkinson,* 182 F.3d at 98 (quoting *Murray v. White,* 155 Vt. 621, 630 n.4 (1991)). Under Vermont law, "lower-level government employees are immune from tort liability when they perform discretionary acts in good faith during the course of their employment and within the scope of their authority." *Hudson v. Town of East Montpelier,* 161 Vt. 168, 171, 638 A.2d 561 (1993). To determine whether a state employee is acting in "good faith," Vermont law relies on the same federal objective standard: whether the defendant's conduct violated "clearly established rights ... of which a reasonable person would have known." *Stevens v. Stearns,* 175 Vt. 428, 434 (2003); *see also Murray v. White,* 155 Vt. 621, 630, 587 A.2d 975 (1991) ("Good faith exists where an official's acts did not violate clearly established rights of which the official reasonably should have known."). "Of course, when we consider state tort liability, the 'clearly established law' is not limited to federal constitutional and statutory rights, but may include Vermont statutes, regulations and common law." *Sabia v. Neville,* 165 Vt. 515, 521 (1996).

Plaintiffs cannot state that Defendant Dubuc violated a clearly established right, much less that he was plainly incompetent or knowingly violated the law. Thus, Defendant Dubuc is entitled to dismissal on qualified immunity grounds.

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CONCLUSION

WHEREFORE, for the reasons stated above, and the reasons for dismissal set forth in the other Defendants' motions, Defendant John Dubuc respectfully requests that this Court dismiss with prejudice all of Plaintiffs' claims against him and dismiss him as a party to this litigation.

DATED at Burlington, Vermont this 25th day of April 2022.

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Attorneys for Defendant John Dubuc

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.	)	

CERTIFICATE OF SERVICE

We hereby certify that on April 25, 2022, we electronically filed *Defendant John Dubac's Motion to Dismiss, Defendant Kevin Hatin's Motion to Dismiss* and *Defendant Marcus Bunnell's Motion to Dismiss* with the Clerk of Court using the CM/ECF system which will send notification of such filing to counsel of record in the case.

DATED at Burlington, Vermont this 25th day of April 2022.

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UNITED STATES DISTRICT COURT
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Plaintiffs,	)	
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DEFENDANT KEVIN HATIN'S MOTION TO DISMISS

NOW COMES Defendant Kevin Hatin, by and through his attorneys, McNeil, Leddy & Sheahan, P.C., pursuant to Federal Rules of Civil Procedure 8 and 12(b)(6), hereby moving to dismiss all claims against him. Plaintiffs have employed impermissible "group pleading" in their Complaint and have otherwise failed to plausibly state a claim against Defendant Hatin upon which relief may be granted.

INTRODUCTION

To say that Plaintiffs' allegations against Defendant Hatin are sparse would be an understatement. Out of a 297-paragraph Complaint, Hatin is named in only three paragraphs. He is not mentioned in any claims brought by five of the seven Plaintiffs: Welch, T.W., T.F., D.H., and A.L.

As alleged in Plaintiffs' Complaint, Defendant Hatin was Operations Supervisor at the Woodside Juvenile Rehabilitation Center in Essex, Vermont. (Doc. 1 ¶ 13). It is alleged that Hatin appeared in a video of an incident during which he and two other male staffers entered a room and struggled to restrain a detainee. (*Id.* ¶ 72). The next paragraph, Paragraph 73 of the

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Complaint, refers to "B.C." and so the detainee in the video may be assumed to be Plaintiff B.C. Later in the Complaint it is alleged that "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." (*Id.* ¶ 186). It is unclear whether this refers to the same incident as that referred to in Paragraph 72 of the Complaint.

The only other allegation is by Plaintiff R.H., who alleges that over the course of nine months in 2018, he 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." (*Id.* ¶ 143). Plaintiff does not allege when Defendant Hatin specifically deployed the pain compliance techniques, what techniques were deployed, for how long they were used during each incident, nor under what circumstances.

ARGUMENT

I. STANDARD GOVERNING MOTIONS TO DISMISS

"The standard for reviewing a motion to dismiss pursuant to Rule 12(b)(6) is well-known." *Wyatt v. City of Barre/Barre City Fire Dep't,* 2012 WL 1435708, *2 (D. Vt. 2012). "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) (internal quotation marks omitted). "Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 555 (2007) (citations omitted).

"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."

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Amaker v. New York State Dep't of Correctional Services, 435 Fed. Appx. 52, 54 (2d Cir. 2011) (internal quotation marks omitted). This "plausibility standard . . . is guided by [t]wo working principles." *Harris v. Mills,* 572 F.3d 66, 72 (2d Cir. 2009) (internal quotation marks omitted). Citing *Twombly,* the U.S. Supreme Court explained:

> First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by merely conclusory statements, do not suffice. . . . Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not show[n]—that the pleader is entitled to relief.

Iqbal, 556 U.S. at 678-79 (citations and internal quotation marks omitted). "[W]e do not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face." *Twombly,* 550 U.S. at 570. When plaintiffs "have not nudged their claims across the line from conceivable to plausible, their complaint[s] must be dismissed." *Id.*

II. ALL CLAIMS BY PLAINTIFFS WELCH, T.W., T.F., D.H., AND A.L. MUST BE DISMISSED AS AGAINST DEFENDANT HATIN

Plaintiffs' Complaint contains no allegations from Welch, T.W., T.F., D.H., or A.L. against Defendant Hatin. The "Factual Background" allegations related to each of these Plaintiffs make no reference to Defendant Hatin, nor is he otherwise referenced regarding any of these Plaintiffs. In the absence of any allegations involving Defendant Hatin, these Plaintiffs cannot state any plausible claim for relief against him. For this reason, these Plaintiffs' claims should be dismissed as to Hatin.

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III. PLAINTIFFS' COMPLAINT IS AN IMPROPER "SHOTGUN PLEADING" LACKING SUFFICIENT NOTICE TO DEFENDANT HATIN

A complaint under Fed. R. Civ. P. 8 must give each defendant fair notice of the claims asserted against him. *See Simmons v. Abruzzo*, 49 F.3d 83, 86 (2d Cir. 1995). Plaintiffs here have impermissibly relied on group pleading in their Complaint, lumping all Defendants together in each Count except for Count Seven. (Doc. 1, pp. 25-32). Plaintiffs have named 22 individual Defendants. While Plaintiffs' Complaint begins with an introductory paragraph and then sets out 220 paragraphs of allegations, all but one of their 12 causes of action lump all 22 Defendants together, the result being that Defendants have inadequate notice of the specific claims against them. This is an improper "shotgun pleading" containing multiple counts adopting allegations of all preceding counts, replete with conclusory allegations, and asserting multiple claims against multiple Defendants without specifying which Defendant is responsible for which act. *Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1320 (11th Cir. 2015). Defendant Hatin's inclusion in the group pleading provides him with inadequate notice of the grounds upon which Plaintiffs' claims against him rest, especially given the sparse reference to him in the Complaint. For this reason, Plaintiffs' purported claims against Defendant Hatin should be dismissed.

IV. PLAINTIFFS' COUNT SEVEN SHOULD BE DISMISSED AS TO DEFENDANT HATIN BECAUSE IT IS NOT DIRECTED AT HIM

While Plaintiffs employ group or "lumped" pleading in most Counts of their Complaint, in Count Seven Plaintiffs specifically name Defendants Schatz, Dale, D'Amico, Longchamp, Harriman, and Wolcott. Plaintiffs do not name Defendant Hatin and indeed they make no allegations against him regarding the Natchez Trace Youth Academy. Because Count Seven is not directed at Defendant Hatin, he should be dismissed as to this Count.

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V. PLAINTIFFS FAIL TO STATE A PLAUSIBLE CLAIM FOR CONSPIRACY UNDER 42 U.S.C. § 1985 AGAINST DEFENDANT HATIN

Plaintiffs state only conclusory allegations in support of their conspiracy claims under 42 U.S.C. § 1985, set forth in Counts One, Two, Three, and Eight. (Doc. 1, pp. 25-26, 30). They have not alleged any evidence of a concerted plan or agreement between any Defendants, especially Defendant Hatin, and they have not alleged any facts to suggest, let alone support, an agreement or meeting of the minds among Defendants. For this reason, Plaintiffs' conspiracy claims must be dismissed.

While Plaintiffs do not specifically allege the subsection of 42 U.S.C. § 1985 under which they bring their conspiracy claims, it is assumed for purposes of this Motion that their claim is brought under § 1985(3) regarding an alleged deprivation of rights or privileges. "In order to state a conspiracy claim under 42 U.S.C. § 1985(3), a plaintiff must show: (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; (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." *Cine SK8, Inc. v. Town of Henrietta*, 507 F.3d 778, 791 (2d Cir. 2007) (citation omitted). "A § 1985(3) conspiracy must also be motivated by some racial or perhaps otherwise class-based, invidious discriminatory animus behind the conspirators' action." *Id.* (citation omitted). Conclusory, vague, or general allegations of conspiracy to deprive a plaintiff of constitutional rights cannot withstand a motion to dismiss. *Sommer v. Dixon*, 709 F.2d 173, 175 (2d Cir. 1983). Allegations that are vague and unsupported by a description of particular overt facts will not survive a motion to dismiss. *Id.* at 175.

At the pleading stage Plaintiffs must at least assert factual allegations against Defendant Hatin that plausibly state a claim of § 1985(3) conspiracy. Plaintiffs allege no class-based,

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invidious discriminatory animus on the part of Defendant Hatin. The Complaint contains no allegation that he came to any agreement with other Defendants or that he acted in furtherance of any conspiracy. For these reasons, Plaintiffs' conspiracy claims in Counts One, Two, Three, and Eight of the Complaint are devoid of any factual support and therefore should be dismissed as to Defendant Hatin.

VI. PLAINTIFFS' COUNTS FOUR, FIVE, AND SIX, WHICH MAY BE ANALYZED SIMILARLY, NONETHELESS DO NOT STATE A PLAUSBILE CONSTITUTIONAL CLAIM AGAINST DEFENDANT HATIN

Plaintiffs' Counts Four, Five, and Six allege constitutional violations under the Eighth and Fourteenth Amendments. Because Plaintiffs in this case were juveniles in non-criminal custody at Woodside, these claims may be similarly analyzed under the Fourteenth Amendment and its due process requirements.

"The Eighth Amendment's prohibition on cruel and unusual punishment 'applies only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions…. [T]he State does not acquire the power to punish with which the Eighth Amendment is concerned until after it has secured a formal adjudication of guilt in accordance with due process of law.'" *G.B. ex rel. T.B. v. Carrion*, No. 09-CV-10582, 2012 WL 13071817, *16 n. 27 (S.D.N.Y. Jan. 1, 2012) (quoting *DeShaney v. Winnebago Cty. Dep't of Social Servs.*, 489 U.S. 189, 199 n.6 (1989)). "Therefore, the Eighth Amendment ban on cruel and unusual punishment is inapplicable in this case." *Jackson v. Johnson*, 118 F. Supp. 2d 278, 287 (N.D.N.Y. 2000). As alleged in the Complaint and citing the recently repealed Vermont statute 33 V.S.A. § 5801, DCF's Woodside Juvenile Rehabilitation Center was a facility for "adolescents who have been adjudicated or charged with delinquency or criminal act." (Doc. 1 ¶ 32). Plaintiffs all allege they were detained a Woodside Juvenile Detention Center (Doc. 1 ¶¶

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119, 132, 150, 159, 173, 184, and 195). Under Vermont law, an order of the Family Division of the Superior Court in a juvenile delinquency proceeding shall not be deemed a conviction of a crime or impose any civil disabilities sanctions ordinarily resulting from a conviction. 33 V.S.A. § 5202. Thus, all Plaintiffs were held at Woodside "in non-criminal custody as juveniles." *G.B. ex rel. T.B. v. Carrion*, No. 09-CV-10582, 2012 WL 13071817, *16 (S.D.N.Y. Jan. 1, 2012) (citing analogous New York statute). Therefore, the Eighth Amendment is inapplicable and Plaintiffs' claims regarding their detention at Woodside are properly analyzed under the Fourteenth Amendment's due process requirements. Because Plaintiffs alleged claims under the Fourteenth Amendment (Counts Five and Six), their Eighth Amendment claims in Counts Four and Five are duplicative and should be dismissed.

Plaintiffs' Counts Five and Six do purport to invoke the rights set forth in the Fourteenth Amendment. However, Plaintiffs' vague pleading is insufficient to put Defendant Hatin on proper notice of a claim against him. The allegations against Defendant Hatin are too vague and speculative as to plausibly state a constitutional claim against him.

"As to the appropriate standard for reviewing a non-criminal detainee's Fourteenth Amendment due process claim, the Supreme Court has held that such a detainee may establish a Fourteenth Amendment violation by showing that the government action at issue was: (1) intended to punish; (2) lacked legitimate purpose; or (3) objectively, was "not 'rationally related to a legitimate nonpunitive governmental purpose' or that the actions 'appear excessive in relation to that purpose.'" *J.S.X. Through D.S.X. v. Foxhoven*, 361 F. Supp. 3d 822, 832-33 (S.D. Iowa 2019) (quoting *Kingsley v. Hendrickson*, 576 U.S. 389, 398 (2015)). Certain "restrictions on liberty" are permissible if they are "reasonably related to legitimate government objectives and not tantamount to punishment." *Id.* (internal quotations omitted). Here, Plaintiffs

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have failed to show, based on the scant factual allegations directed at Defendant Hatin, that his actions were "intended to punish" or "lacked legitimate purpose." Because Plaintiffs have not stated sufficient facts against Defendant Hatin as to the first and second prongs above, their claims under Counts Four, Five, and Six must be dismissed as against Defendant Hatin.

In the alternative, as discussed below, Defendant Hatin is entitled to qualified immunity on Plaintiffs' § 1983 claims for alleged violations of the Eighth and Fourteenth Amendments. Moreover, for the reasons stated above, Plaintiffs' use of group pleading in Counts Four, Five, and Six, lumping all "Defendants" together without any specificity, fails to state a plausible claim against Defendant Hatin.

VII. PLAINTIFFS FAIL TO STATE A FIRST AMENDMENT CLAIM AGAINST DEFENDANT HATIN

Plaintiffs make no allegations against Defendant Hatin that would invoke the First Amendment as alleged in Plaintiffs' Count Nine. Furthermore, Plaintiffs' group pleading under this Count is again insufficient.

To sufficiently plead their First Amendment retaliation claim, Plaintiffs must show: "(1) [they had] a right protected by the First Amendment; (2) the [Defendants'] actions were motivated or substantially caused by [Plaintiffs'] exercise of that right; and (3) the [Defendants'] actions caused [them] some injury." *Dorsett v. County of Nassau,* 732 F.3d 157, 160 (2d Cir. 2013). Plaintiffs allege no facts to indicate that any action by Defendant Hatin was "motivated or substantially caused" by any Plaintiff's exercise of a First Amendment right. For this reason alone, Plaintiffs have failed to state a plausible claim against Defendant Hatin under Count Nine.

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VIII. PLAINTIFFS DO NOT STATE PLAUSIBLE STATE LAW CLAIMS AGAINST DEFENDANT HATIN

Plaintiffs' state law claims (Counts Ten, Eleven, and Twelve) are insufficiently pled as against Defendant Hatin.

As for Plaintiffs' assault and battery claim in Count Ten, Plaintiffs allege that "Defendants repeatedly placed [Plaintiffs] in isolation cells in the North Unit and physically assaulted them." (Doc. 1 ¶ 282). This generalized allegation lumping all Defendants together is insufficient to state a plausible claim of assault and battery against Defendant Hatin. Even if the minimal allegations against Defendant Hatin specifically regarding two of the Plaintiffs were deemed sufficient to state a claim for assault and battery, he is nonetheless entitled to qualified immunity as set forth below.

To state their claim for intentional infliction of emotional harm (Count Eleven), Plaintiffs must show "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." *Fromson v. State*, 2004 VT 29, ¶ 14, 176 Vt. 395 (internal quotation omitted); *see also Crowell v. Kirkpatrick*, 667 F. Supp. 2d 391, 416 (D. Vt. 2009). Plaintiffs' burden is a heavy one and requires Plaintiffs to show conduct "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." *Id.* The test for outrageousness is objective and the court makes the initial determination as to whether the alleged conduct satisfies the test. *Id.* at ¶¶ 14-15. Plaintiffs' allegations as to Defendant Hatin fail this test. The extent of Plaintiffs' allegations against Hatin are that he and other staffers struggled to restrain a detainee (assumed to be B.C.) (Doc. 1 ¶ 72) and on one occasion, which may have been the same incident, he and two other male Woodside

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staff members entered B.C.'s North Unit isolation cell and, with the assistance of Defendant Ruggles, pinned B.C. to the floor and forcibly removed her clothing, leaving her buttocks and vulva exposed (*Id.* ¶ 186). It is also alleged that Hatin was one of several Woodside staff members alleged to have physically restrained R.H., employing pain compliance techniques developed by Defendant Simons (*Id.* ¶ 143). Plaintiffs do not further explain Hatin's involvement in restraining R.H. As a matter of law, Plaintiffs have not satisfied the objective test for outrageous conduct on the part of Defendant Hatin and Count Eleven against him must be dismissed.

Plaintiffs' state law gross negligence claim fares no better. Plaintiffs, in attempting to circumvent the exclusive right of action provision of the Vermont Tort Claims Act and sue Defendants individually, have overextended themselves in asserting a gross negligence claim against all Defendants indiscriminately. "Gross negligence is negligence that is more than an error of judgment; it is the failure to exercise even a slight degree of care, owed to another." *Kennery v. State*, 2011 VT 121, ¶ 41, 191 Vt. 44 (quotations omitted). Whether conduct rose to the level of gross negligence is typically a question of fact for the jury, but dismissal may be appropriate "only if reasonable minds cannot differ." *Id.* To establish gross negligence, Plaintiffs' must show Defendant Hatin "heedlessly and palpably violated a legal duty owed to plaintiff." *Amy's Enters. v. Sorrell*, 174 Vt. 623, 624, (2002) (quotation omitted). Factual allegations of a "wholesale absence of care or indifference to duty owed" is required to state a plausible claim for gross negligence. *Kane v. Lamothe*, 2007 VT 91, ¶ 13, 182 Vt. 241. Plaintiffs fail to state sufficient factual allegations against Defendant Hatin to show any purported conduct rose to the level of gross negligence. Furthermore, Defendant Hatin is also entitled to qualified immunity on this claim.

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IX. DEFENDANT HATIN IS ENTITLED TO QUALIFIED IMMUNITY

Even if Plaintiffs can plead a constitutional violation, which is not conceded, Defendant Hatin is nonetheless entitled to qualified immunity if he did not violate clearly established law particularized to the facts of this case. *White v. Pauly*, 580 U.S. __, 137 S. Ct. 548, 552 (2017). Qualified immunity shields government officials "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *McEvoy v. Spencer,* 124 F.3d 92, 97 (2d Cir. 1997). Qualified immunity protects government officials from lawsuits over errors made while reasonably performing their duties, whether resulting from "a mistake of law, a mistake of fact, or a mistake of mixed questions of law and fact." *Pearson v. Callahan,* 555 U.S. 223, 129 (2009).

Qualified immunity is essentially the same under federal and state law. *See Wilkinson v. Russell,* 182 F.3d 89, 97 (2d Cir. 1999) (Sotomayor, J.), *cert. denied,* 528 U.S. 1155 (2000); *Hubacz v. Protzman,* 2013 WL 1386287, *12 (D. Vt. 2013); *Stevens v. Stearns,* 2003 VT 74 ¶ 15, 175 Vt. 428, 434 (2003). "The only significant difference is that '[q]ualified immunity from a state law claim does not contain the "statutory or constitutional rights" limitation because a state law claim is not so limited.'" *Wilkinson,* 182 F.3d at 98 (quoting *Murray v. White,* 155 Vt. 621, 630 n.4 (1991)). Under Vermont law, "lower-level government employees are immune from tort liability when they perform discretionary acts in good faith during the course of their employment and within the scope of their authority." *Hudson v. Town of East Montpelier,* 161 Vt. 168, 171, 638 A.2d 561 (1993). To determine whether a state employee is acting in "good faith," Vermont law relies on the same federal objective standard: whether the defendant's conduct violated "clearly established rights ... of which a reasonable person would have known." *Stevens v. Stearns,* 175 Vt. 428, 434 (2003); *see also Murray v. White,* 155 Vt.

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621, 630, 587 A.2d 975 (1991) ("Good faith exists where an official's acts did not violate clearly established rights of which the official reasonably should have known."). "Of course, when we consider state tort liability, the 'clearly established law' is not limited to federal constitutional and statutory rights, but may include Vermont statutes, regulations and common law." *Sabia v. Neville,* 165 Vt. 515, 521 (1996).

Plaintiffs cannot state that Defendant Hatin violated a clearly established right that existed in 2018, much less that he was plainly incompetent or knowingly violated the law. Indeed, Plaintiffs' overarching complaint in this case is that certain DCF employees acted pursuant to policies and regulations with which Plaintiffs take issue. If Defendant Hatin was acting pursuant to such regulations, then his actions could not have been objectively unreasonable nor could he have been violating a clearly established right. Thus, Defendant Hatin are entitled to dismissal on qualified immunity grounds.

CONCLUSION

WHEREFORE, for the reasons stated above, and the reasons for dismissal set forth in the other Defendants' motions to dismiss, Defendant Kevin Hatin respectfully requests that this Court dismiss with prejudice all of Plaintiffs' claims against him and dismiss him as a party to this litigation.

DATED at Burlington, Vermont this 25th day of April 2022.

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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.	)	

CERTIFICATE OF SERVICE

We hereby certify that on April 25, 2022, we electronically filed *Defendant John Dubac's Motion to Dismiss, Defendant Kevin Hatin's Motion to Dismiss* and *Defendant Marcus Bunnell's Motion to Dismiss* with the Clerk of Court using the CM/ECF system which will send notification of such filing to counsel of record in the case.

DATED at Burlington, Vermont this 25th day of April 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,

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.

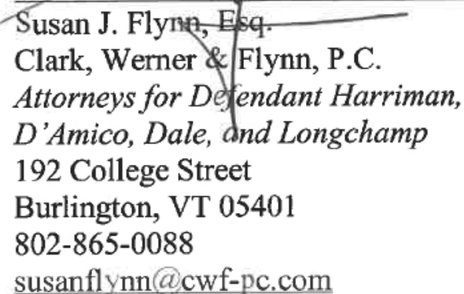
Civil Action No. 5:21-cv-00283

JOINT MOTION TO DISMISS OF DEFENDANTS HARRIMAN, D'AMICO, DALE AND LONGCHAMP

NOW COME DEFENDANTS Amelia Harriman, Melanie D'Amico, Edwin Dale, and Erin Longchamp by and through their attorneys, Clark, Werner and Flynn, P.C., and hereby move this Court to DISMISS all counts lodged against them for failing to state actionable claims, pursuant to Federal Rule of Civil Procedure 12 (b)(6). Furthermore, in the event the Court dismisses all Plaintiffs' claims arising under federal law (e.g., Counts One through Nine), Defendants additionally move to DISMISS all Vermont state law claims for failure of supplemental jurisdiction pursuant to Federal Rules of Civil Procedure 12 (b)(1), 12 (b)(2) or 12

(b)(6), and 28 U.S.C. § 1367 (c)(3). Defendants' reasons for so moving are stated in the accompanying Memorandum Of Law In Support Of Joint Motion To Dismiss Of Defendants Harriman, D'Amico, Dale And Longchamp.[1]

DATED at Burlington, Vermont, this 25th day of April 2022.



By: ______________________

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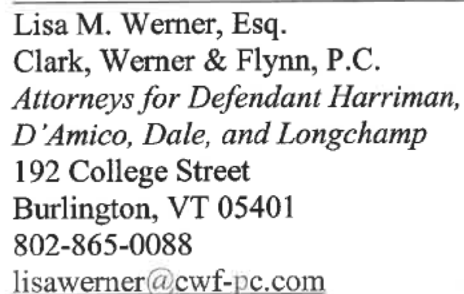
DATED at Burlington, Vermont, this 25th day of April 2022.



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[1] The accompanying Memorandum of Law exceeds the 25-page limit for memoranda supporting dispositive motions provided in this District's Local Rule 7 (a)(4) by approximately 4 pages. However, the instant Memorandum combines the arguments of four separate defendants, who each would be entitled to 25 pages if they opted to file separate motions and memoranda. The undersigned counsel have conferred with counsel for Plaintiffs, who advised that Plaintiffs would not object to the filing of the accompanying Memorandum.

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

MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION TO DISMISS OF DEFENDANTS HARRIMAN, D'AMICO, DALE AND LONGCHAMP

INTRODUCTION

This Memorandum of Law is being filed by defendants Amelia Harriman, Melanie D'Amico, Edwin Dale, and Erin Longchamp, by and through their attorneys, Clark, Werner and Flynn, P.C. Said defendants are hereinafter collectively designated the "Employee Defendants," not just for reading clarity, but to remind the Parties and the Court that the only reason the Complaint identifies them as parties to this action is that they all were "employed by DCF at all times relevant to [the] Complaint. Complaint, ¶¶ 24 – 27. For three of the Employee Defendants

(Harriman, Dale, and Longchamp) the Complaint contains no further factual information about their employment: no job description, no specified job-related duties, no specific duties as to any Plaintiff. The fourth, D'Amico, is alleged to have been DCF's Facilities Manager, but no further information is provided as to what that job description entailed. As will be seen, the Complaint raises numerous theories based on alleged breaches of duty. It is important to keep in mind that it never specifies why such duties apply to these specific defendants. [1]

The Employee Defendants are a small part of a big case. One or more of said Defendants are named in only 20 out of the 220 paragraphs reciting the facts underlying Plaintiff's legal claims (not counting the four paragraphs mentioned earlier stating that they worked for DCF). See, e.g., Complaint, ¶¶ 46 – 47; 88; 91 – 92; 93 – 96; 121 – 128; 149; 163 – 164. Even this number is an exaggeration since the Complaint double-pleads several incidents or interactions. See, e.g., *id.*, ¶¶ 46 – 47 and 163 – 164 (October 2016 complaint to Edwin Dale by an Office of the Juvenile Defender ("OJD") attorney); ¶¶ 88, 124 (July 2017 OJD complaint to Erin Longchamp); ¶¶ 91 – 92; 126 – 128 (September 2017 OJD complaint to Melanie D'Amico).

Of more significance to this motion is the Employee Defendants' insignificance with respect to the troubling acts and occurrence that are at the heart of this action. The Complaint details incidents of physical, emotional and sexual violence, but does not allege that any of the Employee Defendants were personally involved in them. At most, it alleges that all of them possessed some information indicating things might be amiss at the facility known as Natchez Trace, and that some of them failed to act. The Natchez Trace allegations only involve two

[1] The accompanying Memorandum of Law exceeds the 25-page limit for memoranda supporting dispositive motions, as provided in this District's Local Rule 7 (a)(4), by approximately 5 pages. However, the instant Memorandum combines the arguments of *four separate defendants*, who *each* would be entitled to 25 pages if they opted to file separate motions and memoranda. The undersigned counsel have conferred with counsel for Plaintiffs, who advised that Plaintiffs do not object to the filing of the accompanying Memorandum.

Plaintiffs: D.H. and R.H. The Complaint fails to state the dates that either D.H. or R.H. were residents at Natchez Trace. As will be shown, these allegations are not sufficient to sustain any of the Complaint's causes of action against any of the Employee Defendants. Let us begin this discussion by reviewing the allegations against each individual Defendant.

FACTS

Edwin Dale

There are two alleged incidents involving Edwin Dale. In one, he was informed about problematic conditions at Woodside by OJD in October 2016 and forwarded the complaint to Jay Simons and Aron Steward, respectively the Director and Clinical Director of Woodside. Complaint, ¶¶ 12, 14, 46 – 47; 163 – 164.[2] There are no causes of action specifically alleged against Dale based on this allegation. In the other, Plaintiff D.H. purportedly told Dale that Natchez Trace "was a bad place, staff hit a kid's face off the wall and his nose started to bleed," and Dale ignored him. *Id.*, ¶¶ 122 – 123.[3] The Complaint fails to state abuses suffered by D.H. following the wrongdoing he allegedly observed. Crucially, the date of the interaction with D.H. is not specified; it is only alleged to have occurred while D.H. was at Natchez Trace. *Id.*, ¶ 122. The vagueness of the allegation makes it hypothetically possible that D.H. informed Dale of the alleged conditions at the very end of his time at Natchez Trace, possibly after the decision had

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[2] These factual allegations only demonstrate that Dale acted appropriately in notifying Woodside's top administrators about the alleged problem. Dale is only alleged to be liable for failing to act regarding conditions at *Natchez Trace*, not Woodside. See, e.g., Complaint, ¶¶ 261 – 266 (Count Seven).

[3] The specific wording of Paragraph 123 is as follows: "D.H.'s *reports* of the inhumane conditions at the Natchez Trace facility were ignored by Defendant Dale." (emphasis added) However, the only report from D.H. to Dale alleged in the entire Complaint is the *one report* described in ¶ 122.

been made to bring him back to Vermont, possibly the very day DCF collected him. [4] There are no facts supporting that Dale had time to act in response to the statement alleged.

Melanie D'Amico

There are also two alleged incidents associated with Melanie D'Amico. The first involves her allegedly being informed in September 2017 from OJD about poor conditions at Natchez Trace, particularly with respect to D.H. *Id.*, ¶¶ 91, 126 – 127. D'Amico reportedly responded by stating 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." *Id.*, ¶ 92. It is clear that the quotation was torn from a more extensive response which is not provided in the pleadings; nonetheless, as quoted, it doesn't support any wrongdoing. D'Amico is also alleged to have "ignored apparently" said OJD notice. *Id.*, ¶ 128. However, D'Amico's "apparent" failure to act is not supported by any factual allegations. Further, the Complaint entirely fails to mention the date when D.H. left Natchez Trace, which is a critical piece of information needed to support Plaintiffs' claims. It fails to state the dates when R.H. was living at Natchez Trace.

The second incident appears to have arisen in the context of agency deliberations concerning a 2017 complaint raised by the mother of a Natchez Trace resident about the conditions faced by her child. The Complaint states that the mother, "in or about 2017," (¶ 93) complained to D'Amico, DCF Commissioner Kenneth Schatz, and Deputy Commissioner Cindy Wolcott. *Id.*, ¶¶ 8, 10, 93. Details surrounding who made the complaint (mother of whom?),

[4] The dates that D.H. and R.H. left Natchez Trace are missing from the Complaint because the information is unhelpful to Plaintiffs. Upon information and belief, D.H. left Natchez Trace in February of 2017, 5 months before the OJD's alleged complaints. Upon information and belief, R.H. left Natchez Trace in August of 2017—weeks after the OJD's alleged complaints. Defendants are not asking the court to accept these facts—however, they do tend to show that without specifying dates, Plaintiffs have no valid claims.

how the complaint was raised, and how it reached the level of review by the Commissioner are nonexistent, as are any explanations of what D'Amico's role in the process was. The allegations regarding this situation that *are* in the Complaint do not shed much light. Descriptions are hedged in limiting terms, e.g., ¶ 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")(emphasis added); ¶ 96 ("DCF officials, including Defendants Schatz, DCF Commissioner (¶8), Wolcott, DCF Deputy Commissioner (¶10) and D'Amico, DCF employee (¶ 25), *apparently* did not take these complaints [5] seriously and instead continued to place children in its custody, including R.H., at Natchez Trace Juvenile Academy")(emphasis added). Somewhat ironically, in their attempt to paint D'Amico and DCF as uninterested in complaints about conditions at Natchez Trace, *Plaintiffs have affirmatively alleged that the mystery-mother's complaint was directly considered by the highest-level administrators for the Agency. Id.*

Erin Longchamp

Erin Longchamp allegedly was the recipient of an OJD complaint, also in July of 2017, about an incident involving Plaintiff D.H. at Natchez Trace, wherein D.H. was kicked in the testicles and threatened with physical harm. *Id.*, ¶¶ 88, 124. Again, the Complaint neglects to mention the date when D.H. and R.H. left Natchez Trace. While DCF allegedly failed to follow through on this issue, the Complaint does not specifically allege that Longchamp, personally, did anything wrong: "*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." *Id.*, ¶ 125 (emphasis added).

[5] While ¶ 95 uses the plural ("complaints") only one complaint is alleged.

Amelia Harriman

Amelia Harriman's role in this case is at most a cameo. Not only is she never accused of wrongdoing, she is never even squarely alleged to have received notice of the underlying issues. The Complaint alleges that, "R.H.'s complaints to Defendant Amelia Harriman regarding this abuse[6] were ignored and never seriously investigated." Complaint, ¶ 149. This allegation comes somewhat out of the blue, because the Complaint contains no allegation that R.H. complained to her. And, while paragraph 149 is preceded by a long list of issues faced by R.H. at during his eight years in DCF custody, the Complaint fails to provide any specific details as to which of the alleged incidents, if any, R.H. told Harriman about. It also fails to mention whether she received notice before or after R.H. left the Natchez Trace facility. We are again asked to infer a causal connection between Harriman and the putative organizational response to the complaints.

Having reviewed the scant affirmative allegations against the Employee Defendants, we move onto what has not been alleged. There are no allegations that any of the Employee Defendants personally participated in any of the incidents of physical abuse alleged in the Complaint, nor that are they were supervisors of DCF employees who allegedly were involved in such abuse. They are not alleged to have knowledge of any putative conspiracies, much less to have come to any meeting of the minds of other putative conspirators. Thus, they are not subject to any of the conspiracy theories (Counts One, Two, and Three). There are no allegations that any had any discriminatory animus to motivate allegedly unconstitutional acts. At the very most, the Complaint contains allegations that *some* of the Employee Defendants failed to remedy allegedly tortious and/or unconstitutional acts or conditions after receiving notice that there

[6] It seems the Complaint is referencing the prior paragraph, paragraph 148, which states that R.H. was abused at Natchez Trace, but this isn't entirely clear.

might be concerns. As shown below, none of these allegations provide sufficient factual underpinning to support any of the legal theories Plaintiffs have raised.

ARGUMENT

I. STANDARD GOVERNING MOTIONS TO DISMISS

"The standard for reviewing a motion to dismiss pursuant to Rule 12(b)(6) is well-known." *Wyatt v. City of Barre/Barre City Fire Dep't,* 2012 WL 1435708, *2 (D. Vt. 2012). "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) (internal quotation marks omitted). "Factual allegations must be enough to raise a right of relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 555 (2007) (citations omitted) (rejecting former "no set of facts" standard from *Conley v. Gibson).*

"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." *Amaker v. New York State Dep't of Correctional Services,* 435 Fed. Appx. 52, 54 (2d Cir. 2011) (internal quotation marks omitted). This "plausibility standard ... is guided by [t]wo working principles." *Harris v. Mills,* 572 F.3d 66, 72 (2d Cir. 2009) (internal quotation marks omitted). Citing *Twombly,* the U.S. Supreme Court explained:

> *First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by merely conclusory statements, do not suffice. . .* Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the

> court to infer more than the mere possibility of misconduct, the complaint has alleged-but it has not show[n]-that the pleader is entitled to relief.

Iqbal, 556 U.S. at 678-79 (emphasis added, citations and internal quotation marks omitted). "[W]e do not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face." *Twombly,* 550 U.S. at 570. Accordingly, a plaintiff is required to support its claims with sufficient factual allegations to show "more than a sheer possibility that a defendant has acted unlawfully." *Id.* "Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Id.* (quoting *Twombly*, 550 U.S. at 557) (internal quotation marks omitted). When plaintiffs "have not nudged their claims across the line from conceivable to plausible, their complaint[s] must be dismissed." *Id.*

Nine of the Complaint's twelve counts are actually theme and variation pleadings alleging violations of two federal statutes: 42 U.S.C. § 1983 (Counts IV – VII, Count IX) and 42 U.S.C. § 1985 (Counts I – III, Count VIII). The three remaining Counts sound in Vermont common law intentional tort doctrine: assault and battery (Count X), intentional infliction of emotional distress (Count XI) and "grossly negligent and reckless supervision (Count XII). Count Seven, one of the § 1983 claims, is the only one to mention the Employee Defendants by name and to specify what they purportedly did wrong to land them in this lawsuit. It is therefore logical for this analysis to begin with the § 1983 claims, using Count Seven as the first example.

A. Plaintiffs Fail to Specifically Allege any Plausible Basis for Relief Under 42 U.S.C. ¶ 1983 for Counts Four Through Seven and Count Nine.

Counts Four Through Seven and Count Nine, while implicating different pieces of the Bill of Rights, are all brought under the provisions of 42 U.S.C. ¶ 1983.

> "To state a claim under § 1983, a plaintiff must allege that (1) the challenged conduct was attributable at least in part to a person who was acting under color of state law; and (2) the conduct deprived the plaintiff of a right guaranteed under the Constitution of the United States." *Snider v. Dylag*, 188 F.3d 51, 53 (2d Cir. 1999). A complaint under § 1983 "must contain specific allegations of fact which indicate a deprivation of constitutional rights; allegations which are nothing more than broad, simple, and conclusory statements are insufficient to state a claim under § 1983." *Alfaro Motors, Inc. v. Ward*, 814 F.2d 883, 887 (2d Cir. 1987).

Ali v. Ramos, No. 16-cv-01994 (ALC), 2018 U.S. Dist. LEXIS 42489, at *5-6 (S.D.N.Y. Mar. 14, 2018). For liability to attach to a given defendant, plaintiffs must prove that the defendant was personally involved in the allegedly unconstitutional conduct. "It is well settled in this Circuit that personal involvement of defendants in alleged constitutional deprivations is a prerequisite to an award of damages under § 1983." *Wright v. Smith*, 21 F.3d 496, 501 (2d Cir. 1994) (internal quotation marks omitted); *see also Gronowski v. Spencer*, 424 F.3d 285, 293 (2d Cir. 2005) ("Before § 1983 damages are awarded, a plaintiff must show by a preponderance of the evidence that the defendant was personally involved — that is, he directly participated — in the alleged constitutional deprivations.") "[D]irect participation as a basis of liability in this context requires intentional participation in the conduct constituting a violation of the victim's rights by one who knew of the facts rendering it illegal." *Provost v. City of Newburgh*, 262 F.3d 146, 155 (2d Cir. 2001). The Complaint fails to allege that any of the Employee Defendants had the requisite level of personal involvement to be liable under any of the § 1983 based Counts.

1. Deliberate Indifference (Count Seven)

The caption to Plaintiffs' Count Seven states that "Defendants were deliberately indifferent to the violations of Plaintiffs' rights perpetrated by staff members at the Natchez Trace Youth Academy." Complaint, at p. 29. And, certainly, as described above, all the Employee Defendants are alleged to have received some kind of complaint(s) or report relating

to conditions at Natchez Trace, which Edwin Dale and Melanie D'Amico are alleged to have ignored, "ignored apparently," or "apparently [not taken] seriously." *Id.*, ¶¶ 123, 128, 96.

The Oxford English Dictionary defines "indifferent" as, "having no particular interest or sympathy; unconcerned." It is possible that the allegations against some of the Employee Defendants could support a finding that they were indifferent to the circumstances faced by some of the Plaintiffs. However, such ordinary, workaday indifference is a far, far cry from "deliberate indifference" as it is used in constitutional jurisprudence.[7]

In its proper context, Deliberate Indifference is an analytical framework courts use to establish whether a defendant had a sufficiently culpable state-of-mind to justify liability for claims raised under the 8th or 14th Amendment prohibitions on cruel or unusual punishment. See, *Morgan v. Dzurenda*, 956 F.3d 84 (2d Cir. 2020) (8th Amendment); *Caiozzo v. Koreman*, 581 F.3d 63, 72 (2d Cir. 2009) ("[c]laims for deliberate indifference . . . should be analyzed under the same standard irrespective of whether they are brought under the Eighth or Fourteenth Amendment"). Thus, Deliberate Indifference should not really have its own Count, but be subsumed within Counts Four and Six.

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[7] If anything, the allegations against the Employee Defendants could be construed as stating a case sounding in Vermont common law negligence rather than Federal constitutional law. Indeed, that is what paragraph 265 of the Complaint hints at, positing that Defendants owed Plaintiffs a duty of care to ensure that their custody was reasonably safe and to "detect and correct problems that would cause injury to Plaintiffs." Complaint, ¶ 265. However, Plaintiffs have not explicitly pleaded a negligence claim against the Employee Defendants, because they cannot. The Vermont Tort Claims Act provides that actions for damages arising from the act or omission of Vermont State employees acting within the scope of their employment, such as the Employee Defendants, lie exclusively against the State of Vermont, not the individual employees. 12 V.S.A. § 5602.

It is unclear what a state law negligence allegation is doing in the middle of a constitutional Deliberate Indifference claim. It is even more confusing that Plaintiffs chose to insert virtually identical allegations into their 8th Amendment Cruel and Unusual Punishment claim (Count Four, ¶ 240) and 14th Amendment Due Process claim (Count Six, ¶ 256). Since none of said paragraphs go to any of the actual elements under Section 1983 or the respective portions of the Bill of Rights, they serve only to confuse the issues and should be stricken.

The above notwithstanding, the 2nd Circuit requires Deliberate Indifference plaintiffs bringing claims under either the 8th or 14th Amendment to prove: "(1) that [the plaintiff] is incarcerated under conditions posing a substantial risk of serious harm,[8] and (2) that the prison official had a sufficiently culpable state of mind, which in prison-conditions cases is one of deliberate indifference to inmate health or safety. *Morgan v. Dzurenda*, *supra*, at 88 – 89 (internal quotation marks and citations omitted).

> Deliberate indifference requires more than negligence, but less than conduct undertaken for the very purpose of causing harm. *A prison official does not act in a deliberately indifferent manner unless that official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.*

Id. (emphasis added, internal quotation marks and citations omitted). This definition of Deliberate Indifference has virtually nothing in common with the "detect and correct" standard raised by Plaintiffs. See, e.g., Complaint, ¶¶ 240, 256, 265. Significantly, the duty to "correct" constitutional infirmities, if there is one, is triggered by the officer's knowledge, obtained passively. There is no duty to actively investigate, or "detect." This is clear from the requirement that the officer must possess sufficient facts to infer that the subject faced a substantial risk of serious harm. Thus, even if the metaphorical pieces of the puzzle are sitting on the table, there is no liability unless the officer puts the pieces together but still fails to act. Indifferent lack of follow-through, even if negligent, does not constitute cruelty. Pigheaded refusal to act when one *knows of* significant risks to safety does. *Morgan v. Dzurenda*, *supra*, at 88 - 90 (prison guards not deliberately indifferent despite prisoner's oral expression of worry

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[8] For the purposes of this motion, Employee Defendants will assume, without conceding, that the Complaint contains sufficient factual allegations to support the first *Morgan* element, i.e., that Plaintiffs were "incarcerated under conditions posing a substantial risk of serious harm." *Morgan v. Dzurenda*, 956 F.3d, at 88 – 89. Employee Defendants reserve the right to contest this issue in the future.

about being harmed by other prisoner if placed together for recreation time, where other prisoner harmed inmate at recreation time, because oral statements lacked detail and failed to notify guards inmate faced "a substantial risk of serious harm." However, plaintiff's detailed written transfer request which was known to supervisors, combined with and oral concerns voiced by inmate to supervisors, who responded by taunting inmate, precluded grant of summary judgment to supervisors). As shown below, there are no allegations against any Employee Defendant that meet the governing standard for Deliberate Indifference in the 2nd Circuit.

<u>a. Amelia Harriman</u>

As discussed earlier, Harriman purportedly received complaints from R.H. at some unknown time (perhaps after his release) regarding "abuse," and such complaints "were ignored and never seriously investigated." Complaint, ¶ 149. For Harriman to be liable under a Deliberate Indifference theory, she would have to possess sufficient knowledge for her to infer that R.H. faced "a substantial risk for serious harm." *Morgan v. Dzurenda*, *supra*, at 88 – 89. The Complaint does not specify the information known to Harriman, nor the timing of R.H.'s complaints. Perhaps more importantly, the Complaint does not allege that Harriman inferred the presence of such substantial risk and it does not specifically allege that she failed to act. Having not established any of the Deliberate Indifference elements, Amelia Harriman must be DISMISSED, with prejudice, from Count Seven.

<u>b. Erin Longchamp</u>

As discussed in more detail above, Erin Longchamp's sole alleged participation in the circumstances of this matter was her receipt of a complaint from OJD in July 2017 concerning purported abuse of Plaintiff D.H. at Natchez Trace, wherein D.H. was kicked in the testicles and threatened with physical harm. *Id.*, ¶¶ 88, 124. While DCF allegedly failed to follow through on this issue, the Complaint does not specifically allege that Longchamp, personally, ignored the

OJD's concerns. "*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." *Id.*, ¶ 125 (emphasis added).

Unlike the allegations against Harriman, those against Longchamp specify what she knew and when she knew it. However, the allegations still amount to a snapshot covering a single incident, and importantly, the allegations do not support that Harriman knew of the harm at a point in time when D.H. (or R.H.) were still at Natchez Trace. The facts alleged do not suggest that Longchamp had sufficient knowledge to infer that D.H. faced "a substantial risk for serious harm." *Morgan v. Dzurenda*, *supra*, at 88 – 89. And, as with Harriman, there is no allegation that Longchamp made the inference of such risk, nor that she, personally, failed to act. Therefore, Plaintiffs have not stated a Deliberate Indifference claim against Longchamp under 42 U.S.C. § 1983 and Count Seven must be DISMISSED against her, with prejudice. *Morgan v. Dzurenda*, *supra*; *Provost v. City of Newburgh*, *supra*; *Harris v. Mills*, *supra*.

c. Edwin Dale[9]

As noted in the Facts section, Dale purportedly received "reports" from D.H. regarding "inhumane conditions" at the Natchez Trace facility, (Complaint, ¶¶ 121, 123) although the Complaint only details one report, in which Dale is alleged to have been told by D.H. that Natchez Trace "was a bad place, staff hit a kid's face off the wall and his nose started to bleed." *Id.*, ¶ 122. No date is specified for said "report" or any others, although the timeframe is limited to times while D.H. was detained at Natchez Trace. *Id.*, ¶ 121. However, the allegations do not support that Dale knew of said alleged information at a point in time when D.H. was to remain at

[9] Count Seven specifically concerns violations of Plaintiffs' rights at the Natchez Trace facility. Curiously, the Complaint also contains allegations that Dale received and forwarded an OJD complaint regarding G.W.'s treatment at Woodside to Woodside's Director and Clinical Director. Complaint, ¶¶ 46 - 47, 163 – 164. It is unclear what purpose these allegations serve, *but it is clear that they do not relate to Natchez Trace and are irrelevant to Count Seven*. Thus, this memo's analysis will be limited to the allegations discussed in the body text.

Natchez Trace. It is possible, based on the facts, that D.H. relayed the information to Dale on the date Dale came to Natchez Trace to retrieve him.

Unlike the allegations against Harriman and Longchamp, those concerning Dale tag Dale as having personally "ignored" D.H. *Id.*, ¶ 123. However, similarly to Longchamp, the Complaint just describes Dale's knowledge of a single alleged incident at Natchez Trace, which did not even involve D.H. Having failed to allege that Dale knew of and disregarded an excessive risk *to D.H.'s safety*, Count Seven must be DISMISSED with prejudice against Dale. *Morgan v. Dzurenda, supra*; *Provost v. City of Newburgh, supra*; *Harris v. Mills, supra.*

d. Melanie D'Amico

In their § 1983 claim against Melanie D'Amico, Plaintiffs fail to "nudge[] their claims across the line from conceivable to plausible." *Iqbal,* 556 U.S. at 678-79. D'Amico is alleged to have been the Residential Services Director for DCF (Complaint, ¶ 91) and she is accused of "apparently" ignoring reports about bad conditions at the Natchez Trace facility. *Id.*, ¶¶ 91, 126 – 128. She is also alleged to have "apparently" not taken seriously an inmate's mother's complaint about Natchez Trace, together with DCF Commissioner Kenneth Schatz, and Deputy Commissioner Cindy Wolcott. *Id.*, ¶ 96. A one and a half sentence snippet excised from an email D'Amico wrote to OJD in response to OJD's report on D.H. at Natchez Trace is presented, in which she characterizes OJD's complaints as overgeneralizations and states that "only positive experiences have been reported to me." *Id.*, ¶ 92. None of this reflects the actions she took or failed to take following receipt of the alleged complaints.

However, that's all there is. There are no allegations detailing D'Amico's duties as DCF Facilities Director. There are no allegations that D'Amico knew any information about the putative inhumane conditions at Natchez Trace before the September 2017 OJD email and the complaint by an unnamed mother. Indeed, taking the alleged D'Amico quote at face value, it

appears that the OJD email of July of 2017 was the first negative report she had heard regarding Natchez Trace.

It is not cruel or unusual punishment to express skepticism to claims allegedly raised by a juvenile and reported through his counsel. Nor is it evidence supporting a theory that D'Amico or DCF failed to take the concerns "seriously." The out of context excerpt shows that D'Amico took the report seriously enough to write a response containing her honest perspective. Furthermore, the allegations concerning the unidentified Natchez Trace resident's mother's complaint further demonstrate that D'Amico and DCF were taking the issue quite seriously by allegedly directly involving Director-level staff. *Id.*, ¶ 96.

As with the other Employee Defendants, the Complaint fails to allege details about the information known by D'Amico regarding risks faced by R.H. or D.H. at Natchez Trace. Conversely, the allegations regarding D'Amico's purported failure to take concerns "seriously" quite clearly establish that D'Amico *did not infer* that either R.H. or D.H. faced any excessive risks to health or safety there. *Morgan v. Dzurenda*, *supra*, at 88 – 89 (for Deliberate Indifference liability to attach, the defendant official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference).

Finally, the Complaint also does not really allege that D'Amico failed to act, merely that she did not act as Plaintiffs would have wished her to act, in retrospect. The previously noted lack of specificity anywhere in the Complaint regarding the dates when D.H. and R.H. resided at Natchez Trace further doom any theory based upon purported failure to act. The timing is important. If Defendants did not receive notice in time to change anything, there can be no claims.

Because Plaintiffs' Count Seven and its underlying facts fail to sufficiently allege claims based on Deliberate Indifference against D'Amico or any other Employee Defendant, Plaintiffs have not shown a violation of 42 U.S.C. § 1983, and have failed to state a case that can survive a Rule 12 (b)(6) motion. Count Seven must be DISMISSED with prejudice as to D'Amico and all other Employee Defendants. *Morgan v. Dzurenda, supra*; *Provost v. City of Newburgh, supra*; *Harris v. Mills, supra.*

2. The Complaint Fails to Allege that any of the Employee Defendants Violated the 8th Amendment's Prohibition on Cruel and Unusual Punishment (Count Four).

In their Count Four, Plaintiffs broadly accuse all defendants somewhat generically of 8th Amendment violations in:

> 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.

Complaint, ¶ 241. On its face, the above allegation is an amorphous shotgun pleading pointing at all Defendants. [10] "Wanton and willful conduct" could mean anything. However, to the extent

[10] In addition to the specific reasons discussed in the body text necessitating dismissal of Count Four against the Employee Defendants, said Defendants hereby raise a more global argument for dismissing Counts Four, Five, and Six: namely, that the aforementioned allegations against all Defendants, collectively, fail to give Employee Defendants proper notice as to the nature of the § 1983 claims against them in said Counts.

As discussed in the body text, Count Seven is the only Count that specifically names the Employee Defendants and implicates the facts concerning them in the Complaint. See pages 9 – 16, above. Count Seven references the Fourteenth Amendment's guarantees that no person shall be deprived of life, liberty, or property, without due process of law. Complaint, ¶ 263. It also specifically grounds its Deliberate Indifference theory of recovery on purported violations of Plaintiffs' "(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." *Id.*, ¶ 266. (footnote continues on next page)

that paragraph 241 provides any notice regarding its claim, it is in the language referencing isolation, seclusion and physical restraint at the Woodside facility. None of the Employee Defendants are alleged to have personally physically restrained any Plaintiff or moved any into a seclusion cell. Therefore, the Complaint fails to allege that any had the personal involvement in purported 8th Amendment violations to trigger liability under 42 U.S.C. 1983. *Twombly, supra*; *Provost v. City of Newburgh, supra*; *Harris v. Mills, supra*. Count Four must therefore be DISMISSED with prejudice as to all Employee Defendants.

(cont'd) Count Four, currently under discussion, broadly accuses all Defendants of violating the Eighth Amendment bar on cruel and unusual punishment, *id.*, ¶ 241, just as Count Five accuses all of violating Plaintiffs' 8th and 14th Amendment right to be free of excessive force, *id.*, ¶ 251, Count Six lobs broad accusations of broad violations of both procedural and substantial due process guarantees under the 14th Amendment *id.*, ¶ 260, and Count Nine tags all Defendants with First Amendment retaliation. *Id.*, ¶ 276.

The language regarding Constitutional violations in ¶¶ 241, 261 and 276 is substantially identical to that contained in more condensed form in ¶ 266.

It is impossible to tell, based on the pleadings, whether Counts Four through Six are directed at the Employee Defendants. Certainly, they shouldn't be, because there does not appear to be any § 1983 liability contained in those Counts that is not duplicative of that set forth in Count Seven. However, they are alleged against all Defendants, and Employee Defendants fall into that group.

The 2nd Circuit recognizes that:

> [T]o be liable under § 1983, an individual defendant must have "*personally* violated a plaintiff's constitutional rights." *Naumovski*, 934 F.3d at 212 (quoting *Raspardo v. Carlone*, 770 F.3d 97, 115 (2d Cir. 2014)). And "[b]ecause the personal involvement of a defendant is a prerequisite to an award of damages under § 1983, a plaintiff cannot rely on a group pleading against all defendants without making specific individual factual allegations." *Wyatt v. Kozlowski*, No. 19-CV-159W(F), 2021 U.S. Dist. LEXIS 7707, 2021 WL 130978, at *7 (W.D.N.Y. Jan. 14, 2021) (quoting *Spring v. Allegany-Limestone Cent. Sch. Dist.*, 138 F. Supp. 3d 282, 293 (W.D.N.Y. 2015), *vacated in part on other grounds*, 655 F. App'x 25 (2d Cir. 2016)). "Such 'group pleading' violates Fed. R. Civ. P. 8(a)'s requirement that a pleading 'give each defendant fair notice of the claims against it.'" *Id.* (quoting *Holmes v. Allstate Corp.*, No. 11 Civ. 1543(LTS)(DF), 2012 WL 627238, at *22 (S.D.N.Y. Jan. 27, 2012), *report and recommendation adopted*, 2012 WL 626262 (S.D.N.Y. Feb. 27, 2012)).

Stevenson v. N.Y. State Dep't of Corr. & Cmty. Supervision, No. 1:21-cv-355, 2022 U.S. Dist. LEXIS 10663, at *24-25 (W.D.N.Y. Jan. 19, 2022). Because the overly broad application of Counts Four through Six against all Defendants does not give Employee Defendants fair notice of what, if any claims are being made against them in those Counts, they must be DISMISSED against the Employee Defendants with prejudice.

3. The Complaint Fails to Allege that any of the Employee Defendants Violated the 8th or 14th Amendment Ban on the Use of Excessive Force.

Count Five contains allegations that all Defendants violated constitutional prohibitions against the use of excessive force. The force used allegedly shocks the conscience. Complaint, ¶¶ 246 - 248. It was objectively unreasonable. *Id.*, ¶¶ 247 – 248. The use of force was unjustified, was performed with actual malice, willful and wanton indifference, and deliberate disregard for human life. *Id.*, ¶ 250.

These are serious allegations, but they do not apply to the Employee Defendants, none of whom has been accused of so much as touching any Plaintiff. There is no support for the allegation that all Defendants were acting in concert or jointly. *Id.*, ¶ 249. Paragraph 248 is really just a restatement of the Deliberate Indifference argument that has already been addressed. Because the Complaint fails to allege that any Employee Defendant had the personal involvement in purported 8th or 14th Amendment violations to trigger liability under 42 U.S.C. § 1983, Count Five must therefore be DISMISSED with prejudice as to all Employee Defendants. *Morgan v. Dzurenda, supra*; *Provost v. City of Newburgh, supra*; *Harris v. Mills, supra.*

4. The Complaint Fails to Allege that any of the Employee Defendants Violated the 14th Amendment Due Process Clause.

The allegations in Count Six are substantially the same as that of Count Four; that Defendants allegedly confined, isolated, physically restrained, and punished Plaintiffs. Complaint, ¶¶ 257 – 259. [11] Since no Employee Defendant has been accused of personally participating in any of these acts, and since any 14th Amendment Deliberate Indifference theories have already been disposed of, Count Six must be DISMISSED with prejudice as to all

[11] ¶ 257 also alleges that Defendants "treated" Plaintiffs. It is unclear what this means.

Employee Defendants. *Morgan v. Dzurenda, supra*; *Provost v. City of Newburgh, supra*; *Harris v. Mills, supra*.

5. The Complaint Fails to Allege that any of the Employee Defendants Violated Plaintiffs R.H. and T.F.'s Right to Petition the Government for Redress of Grievances

Plaintiffs First Amendment claim is found at paragraph 276, which avers:

> 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.

Before going any farther, we need to clear the decks by DISMISSING Count Nine with prejudice as to Edwin Dale, Melanie D'Amico and Erin Longchamp. Said Defendants are not alleged to have been involved with either R.H. or T.F.,[12] therefore they cannot be liable under Count Nine.

Moving on, the 2d Circuit recently stated the required elements for a retaliation claim:

> "[T]o sustain a First Amendment retaliation claim, a prisoner must demonstrate the following: '(1) that the speech or conduct at issue was protected, (2) that the defendant took adverse action against the plaintiff, 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) (quoting *Dawes v. Walker*, 239 F.3d 489, 492 (2d Cir. 2001), *overruled on other grounds by Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 122 S. Ct. 992, 152 L. Ed. 2d 1 (2002)). We "must approach prisoner claims of retaliation 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." *Dawes*, 239 F.3d at 491.

Bacon v. Phelps, 961 F.3d 533, 542-43 (2d Cir. 2020).

The Complaint fails to establish any of the *Bacon* elements. First, since the Complaint contains no information about the alleged complaints, it is impossible to determine whether or

[12] None of the Employee Defendants are alleged to have been involved with T.F.

not they constituted First Amendment protected speech. Second, there is no allegation that Amelia Harriman took adverse action against R.H. Indeed, *there is no allegation that Harriman took any action at all.* As demonstrated above, Amelia Harriman's level of participation in the circumstances underlying this action was at most a cameo. Complaint, ¶ 149 ("R.H.'s complaints to Defendant Amelia Harriman regarding this abuse were ignored and never seriously investigated"). While Harriman was allegedly the recipient of R.H.'s complaints, there is no allegation that she, personally retaliated against him. In the absence of any alleged adverse action by Harriman, it is unnecessary to reach *Bacon's* causation element.[13] Since the Complaint fails to allege specific retaliation and fails to allege Harriman's personal involvement, Count Nine must be DISMISSED with prejudice against Harriman.

B. Plaintiffs Fail to Plead Plausible Basis for Relief Under 42 U.S.C. § 1985 for Counts One Through Three and Count Eight.

The first three counts and Count Eight are brought under 42 U.S.C. ¶ 1985, "Conspiracy to interfere with civil rights." See, e.g., Complaint, ¶¶ 221 – 226 (Count One – Conspiracy to violate the Eighth Amendment ban on cruel and unusual punishment); ¶¶ 227 – 229 (Count Two – Conspiracy to violate the Eighth Amendment and Fourteenth Amendment's ban on the use of excessive force); ¶¶ 230 – 235 (Count Three – Conspiracy to violate Plaintiffs' right to due process of law as guaranteed by the Fourteenth Amendment); ¶¶ 267 – 271 (Count Eight – Conspiracy to violate the First Amendment's Right to Petition the Government for Redress of

[13] *Bacon* is clear that liability is limited to defendants who knew about a plaintiff's protected speech and retaliated specifically because of the speech. It does not apply to persons who, like Harriman, heard or witnessed the speech. But Plaintiffs fail to specifically identify any individual Defendant(s) who took adverse action *because* they became aware of R.H.'s alleged complaints to Harriman. Even if they did so, the Complaint's failure to state the date of the complaints and its portrayal of R.H.'s extended time in DCF as an ongoing misery make it impossible to causally connect any of the purported abuses to anything R.H. may have told Harriman. Finally, the allegation that the complaints were supposedly ignored make it unlikely that word would have gotten back to anyone in a position to retaliate.

Grievances). While the Complaint fails to allege the specific statutory language giving rise to Plaintiffs' conspiracy theories, presumably they fall under the third paragraph of Section 1985, which broadly provides for an action for damages arising from injuries occasioned by a conspiracy of two or more persons to deprive persons of equal protection, privileges, and immunities under the law, *inter alia*. 42 U.S.C.S. § 1985 (3)

*1. Counts One, Two, Three and Eight Must be Dismissed for **All** Defendants As a Matter of Law Pursuant to the Intracorporate Conspiracy Doctrine.*

Although the weaknesses of Plaintiffs' conspiracy theories with respect to the Employee Defendants will be addressed below, it is really not necessary for the Court to proceed to such close analysis. All conspiracy counts against all Defendants should be dismissed as a matter of law pursuant to intracorporate conspiracy doctrine.

> 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. N.Y. State Dep't of Corr. & Cmty. Supervision*, No. 1:21-cv-355, 2022 U.S. Dist. LEXIS 10663, at *37-38 (W.D.N.Y. Jan. 19, 2022).

Every single Defendant named in the Complaint was an employee of the State of Vermont's Department of Children and Families. Complaint, ¶¶ 8 – 29. All Defendants' acts are alleged, in multiple paragraphs, to have occurred under the color of state law. See, e.g., *id.*, ¶¶ 222, 228, 231, 237, 243, 253, 262, 268, 273. There are no allegations that any individual defendant was acting out of an independent personal conspiratorial purpose or for any purpose

other than their duties as DCF employees. [14] Because the intracorporate conspiracy doctrine provides that DCF cannot conspire with itself, Counts 1, 2, 3 and 8 fail to state a claim upon which relief can be granted under 42 U.S.C. § 1985 and must therefore be DISMISSED with prejudice.

2. *Elements of Liability Under 42 USCS § 1985(3)*

On the off-chance this Court finds intracorporate conspiracy inapplicable to this matter, Plaintiffs conspiracy theories still fail to state any claim against the Employee Defendants. In the 2nd Circuit, the essential elements a Section 1985 (3) plaintiff must prove are "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 right, or privilege of a citizen of the United States." *Bailey v. N.Y. Law Sch.*, No. 19-3473, 2021 U.S. App. LEXIS 34926 (2d Cir. Nov. 24, 2021). Moreover,

> To withstand a motion to dismiss, the conspiracy claim must contain more than "conclusory, vague or general allegations of conspiracy to deprive a person of constitutional rights." *Boddie v. Schnieder*, 105 F.3d 857, 860 (2d Cir. 1997); *Shabazz v. Pico*, 994 F. Supp. 460, 467 (S.D.N.Y. 1998) (holding that a mere allegation of conspiracy with no facts to support it cannot withstand a motion to dismiss). Specifically, 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"; plaintiff must also provide "some 'details of time and place and the alleged effects of the conspiracy.'" *Warren v. Fischl*, 33 F. Supp. 2d 171, 177 (E.D.N.Y. 1999) (finding insufficient allegation of conspiracy despite plaintiff's specific claims of conspiracy to alter tapes and create illegal search warrants, as there was no basis for the assertion that defendants actually conspired together to bring about these actions), quoting *Dwares v. City of New York*, 985 F.2d 94, 100 (2d Cir. 1993); see also *Hickey-McAllister v. British Airways*, 978 F. Supp. 133 (E.D.N.Y. 1997) (holding that even though plaintiff

[14] There is an exception to the intracorporate conspiracy doctrine where individuals within the corporate entity conspire in their own personal interest, wholly separate and apart from the entity. See, e.g., *Broich* v. *Incorporated Village of Southampton,* 650 F. Supp. 2d 234, 247 (E.D.N.Y. 2009) (quoting *Everson* v. *New York City Transit Authority,* 216 F. Supp. 2d 71, 76 (E.D.N.Y. 2002). On the alleged facts, this exception does not apply.

> alleged a conspiracy to present false testimony, she did not allege that defendants had any meeting of the minds), citing *San Filippo v. U.S. Trust Co. of NY*, 737 F.2d 246, 256 (2d Cir. 1984). The *Hickey-McAllister* court found that mere allegations that defendants' actions were committed "in furtherance of a conspiracy" were not enough, as "plaintiff has alleged no facts at all from which a meeting of the minds between [defendants] on a course of action intended to deprive plaintiff of her constitutional rights can be inferred." 978 F. Supp. at 139.

Romer v. Morgenthau, 119 F. Supp. 2d 346, 363 - 364 (S.D.N.Y. 2000). See, also, *Webb v. Goord*, 340 F.3d 105, 110 - 111 (2d Cir. 2003) (dismissing prisoner plaintiffs' conspiracy claims for failure to allege meeting of minds except in most conclusory fashion, in a case that, like the instant case, was grounded in multiple incidents involving multiple plaintiffs in multiple different facilities over a prolonged period of time). Because none of Plaintiffs' § 1985 claims come remotely close to alleging a meeting of the minds to deprive particular persons of particular constitutional protections, all must succumb to DISMISSAL.

It is not even worthwhile to split up the individual conspiracy Counts. All name every Defendant, and all just track the language of the Counts alleging the substantive Constitutional violations. E.g., Compare Complaint, ¶ 226 (setting forth 8th Amendment Conspiracy claim)[15] with ¶ 241 (setting forth substantive 8th Amendment claim).[16] The only difference is that the former cites § 1985 and the latter cites § 1983 (and neither paragraph states the elements for the

[15] 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.
Complaint, ¶ 226.

[16] 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.
Complaint, ¶ 241.

claim each purportedly raises). The same holds true for ¶ 229 (Conspiracy to violate 8th/14th Amendment ban on excessive force) and ¶ 251 (Violation of 8th/14th Amendment ban on excessive force); ¶¶ 235, 260 (Conspiracy and substantive due process violations, respectively); ¶¶ 271, 276 (Conspiracy and substantive 1st Amendment violations, respectively).

What these allegations add up to is a meta-theory that EVERY Defendant conspired with EVERY OTHER Defendant to violate EVERY Constitutional provision raised in Counts Four through Seven and Count Nine. However, no detail is given as to any Defendant's animus against Plaintiffs or precisely what the overarching conspiracy meant to achieve. Most significantly for the purposes of this motion, there are no allegations of any meeting of the minds on any of these crucial details. *Webb, supra*; *Romer*, *supra*.

3. Conclusion Regarding 42 U.S.C. § 1985 Liability

Because Plaintiffs have failed to plead factual allegations with respect to the Employee Defendants that could demonstrate the existence of the elements of liability under 42 U.S.C. § 1985, and because Plaintiffs' *have* pleaded that all Defendants are employees of DCF, a single corporate entity, they have failed to state claims for conspiracy under the First, Eighth or Fourteenth Amendments to the United States' Constitution, and Count One, Count Two, Count Three and Count Eight must all be DISMISSED with prejudice.

C. The Employee Defendants are Protected by Qualified Immunity

Qualified Immunity is an affirmative defense available to officials who have been sued for alleged Constitutional violations. *McKenna v. Wright*, 386 F.3d 432, 436 (2d Cir. 2004). Although affirmative defenses are generally first stated in the Answer to a Complaint, the qualified immunity defense "may be asserted in a motion to dismiss under Rule 12(b)(6) of the Rules of Civil Procedure 'as long as the defense is based on facts appearing on the face of the complaint.'" *Id.*

> When assessing qualified immunity, a court first determines "whether the facts shown `make out a violation of a constitutional right.'" *Taravella v. Town of Wolcott*, 599 F.3d 129, 133 (2d Cir. 2010) (quoting *Pearson*, 555 U.S. at 223). Then, a court will grant qualified immunity if "one of two conditions is satisfied: (a) the defendant's action did not violate clearly established law, or (b) it was objectively reasonable for the defendant to believe that his action did not violate such law." *Garcia*, 779 F.3d at 92(quoting *Russo v. City of Bridgeport*, 479 F.3d 196, 211 (2d Cir. 2007)). Whether "qualified immunity applies in a particular case 'generally turns on the objective legal reasonableness' of the challenged action, 'assessed in light of the legal rules that were clearly established at the time it was taken.'" *DiStiso v. Cook*, 691 F.3d 226, 240 (2d Cir. 2012) (quoting *Messerschmidt v. Millender*, 565 U.S. 535, 546, 132 S. Ct. 1235, 182 L. Ed. 2d 47 (2012)). An act is "objectively reasonable" if 'officers of reasonable competence could disagree' on the legality of the defendant's actions." *Lennon v. Miller*, 66 F.3d 416, 420 (2d Cir. 1995) (quoting *Malley v. Briggs*, 475 U.S. 335, 341, 106 S. Ct. 1092, 89 L. Ed. 2d 271 (1986)).

Ali v. Ramos, No. 16-cv-01994 (ALC), 2018 U.S. Dist. LEXIS 42489, at *16-19 (S.D.N.Y. Mar. 14, 2018). As argued above, Plaintiffs have failed to plead sufficiently specific allegations to survive dismissal as to any of their Constitutional claims. However, to the extent that this Court finds merit to any, they should still be dismissed pursuant to qualified immunity. Recall that Employee Defendants are not personally implicated in any of the disturbing events chronicled in the Complaint, but, rather, are accused of failing to act in the face of scant knowledge of wrongdoing. The Complaint fails to cite any clearly established legal rule requiring further action given the level of notice each Employee Defendant allegedly was privy to. Nor does it specify anywhere exactly what actions said Defendants were obligated to but failed to take. Under the Complaint's allegations, officers of reasonable confidence could disagree whether Employee Defendants did anything wrong. Therefore, all are protected by the qualified immunity defense and all federal claims against them should be DISMISSED.

D. Vermont Common Law Torts

Plaintiffs' final three claims come under Vermont common law. Should the Court dismiss all Federal claims against the Employee Defendants, said Defendants request that the

state claims, Counts Ten through Twelve, also be DISMISSED due to failure of pendent jurisdiction. 28 U.S.C. § 1367 (c)(3)(court may decline to exercise supplemental jurisdiction over state law claim if court has dismissed all claims over which it has original jurisdiction). *Gadreault v. Bent*, Civil Action No. 2:20-cv-83-kjd, 2022 U.S. Dist. LEXIS 57223, at *33-34 (D. Vt. Mar. 3, 2022)(If the plaintiff "has no valid claim under § 1983 against any defendant, it is within the district court's discretion to decline to exercise supplemental jurisdiction over the pendent state-law claims") *Matican v. City of New York*, 524 F.3d 151, 155 (2d Cir. 2008). Barring that, Employee Defendants state as follows.

1. Assault and Battery (Count Ten)

Under Vermont law, assault and battery is an intentional tort. *Wilson v. Smith*, 144 Vt. 358, 477 A.2d 964 (1984). Loosely, a defendant is liable for assault if s/he acts with the intent to cause a harmful or offensive contact on another person and that person becomes apprehensive that s/he is being attacked. *Godin v. Corr. Corp. of Am.*, 2017 Vt. Super. LEXIS 86, * 54. The defendant is liable for battery if the harmful or offensive contact succeeds in reaching the other person. *Id.,* * 57. As stated above, none of the Employee Defendants are alleged to have threatened or touched any of the Plaintiffs. Therefore, Count Ten must be DISMISSED with prejudice as to Edwin Dale, Melanie D'Amico, Erin Longchamp and Amelia Harriman.

2. Intentional Infliction of Emotional Harm (Count Eleven)

The tort Plaintiffs raise against all Defendants in Count Eleven is more commonly referred to in Vermont as intentional infliction of emotional distress ("IIED"), rather than emotional harm. See *Fromson v. State*, 2004 VT 29.

> To sustain a claim for IIED 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's burden on this claim is a "heavy one" as

> he 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. at 83, 807 A.2d at 398.

Fromson v. State, 2004 VT 29, ¶ 14. As stated numerous times already, each of the Employee Defendants is alleged to have received some form of complaint regarding conditions faced by certain of the Plaintiffs at Woodside and/or Natchez Trace, and some of the Employee Defendants allegedly did not follow through after receiving said concerns. While Defendants' purported failure to investigate matters further could conceivably have been negligent, NOTHING any Employee Defendant did or did not do can be construed as conduct "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." *Id.* Because Plaintiffs have not pleaded an IIED claim against the Employee Defendants, and Count Ten must be DISMISSED with prejudice as against Edwin Dale, Melanie D'Amico, Erin Longchamp and Amelia Harriman.

3. Grossly negligent and reckless supervision (Count Twelve)

Finally, Plaintiffs allege that all Defendants are liable due to grossly negligent and reckless supervision of Plaintiffs while they were in DCF custody. Complaint, ¶¶ 293 – 296. There is no specific tort of "grossly negligent and reckless supervision," and recklessness is more a state-of-mind than a tort unto itself, [17] but there is a tort of gross negligence, so we will begin there.

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[17] There is no tort of reckless supervision, and the broader concept of recklessness is one that at least one Superior Court feels the Vermont Supreme Court has "groped for" but never quite grasped. *Babel v. Roman Catholic Diocese of Burlington*, 2008 Vt. Super. LEXIS 20, *8-9 (adopting Restatement 3d Torts, Liability for Physical Harm, Proposed Final Draft 1 (2005), § 2 (Recklessness)

> § 2. Recklessness
> A person acts recklessly in engaging in conduct if:
> (a) the person knows of the risk of harm created by the conduct or knows facts that make the risk obvious to another in the person's situation, and

a. Gross negligence

> Gross negligence is a "heedless and palpable violation of legal duty respecting the rights of others." *Shaw, Adm'r v. Moore*, 104 Vt. 529, 531, 162 A. 373, 374 (1932). "[G]ross negligence is more than an error of judgment," *Hardingham v. United Counseling Service of Bennington County, Inc.*, 164 Vt. 478, 481, 672 A.2d 480, 482 (1995) (quotation and citations omitted), it is the failure to exercise "even a slight degree of care" owed to another. *Mellin v. Flood Brook Union Sch. Dist.*, 173 Vt. 202, 220, 790 A.2d 408, 423 (2001) (quotations and citations omitted).

Kane v. Lamothe, 2007 VT 91, ¶ 12. In *Kane*, the Vermont Supreme Court reviewed the Superior Court's dismissal of a domestic abuse victim's claim of gross negligence against a Vermont state trooper who had responded to plaintiff's 911 call in which she reported that her boyfriend had sexually assaulted her. *Kane*, at ¶ 3. The trooper arrived on the scene, documented the victim's visible scrapes and bruises, interviewed the victim and the assailant, and then left without making an arrest or investigating further. *Id.* The next day, the assailant broke into the victim's apartment and sexually assaulted her a second time. *Id.*, ¶ 4.

The Superior Court dismissed plaintiff's gross negligence claim. The Vermont Supreme Court affirmed, stating:

> Assuming, for the sake of argument, that the trooper might have better investigated the matter and exercised his discretion differently, plaintiff nevertheless failed to set forth a wholesale absence of care or indifference to duty owed to her, as is necessary to state a viable claim for gross negligence. See *Hardingham*, 164 Vt. at 483, 790 A.2d at 484 ("[A]n error of judgment or a loss of presence of mind … could be viewed as negligent, but not grossly negligent."). Accordingly, in the absence of a duty, the claim of gross negligence was properly dismissed.

Kane v. Lamothe, 2007 VT 91, ¶ 13. The facts in *Kane* are unsettling, in that the trooper was at the site and saw physical evidence and heard testimony about an assault that had just happened,

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> (b) the precaution that would eliminate or reduce the risk involves burdens that are so slight relative to the magnitude of the risk as to render the person's failure to adopt the precaution a demonstration of the person's indifference to the risk.

Babel has not been followed in this by either the Vermont Supreme Court or other Superior Courts.

but two levels of Vermont court found that his failure to take further action was not grossly negligent. In the instant case, Edwin Dale is alleged to have heard an account from D.H. about an incident that happened to another inmate. Complaint, ¶ 122. Melanie D'Amico allegedly received a complaint about Natchez Trace regarding D.H. and a complaint from a different Natchez Trace inmate's mother. *Id.*, ¶¶ 91 – 96, 126 – 128. Erin Longchamp is alleged to have received a report about a single incident involving D.H. *Id.*, ¶¶ 88, 124 – 125. We do not know what he said or when he said it, but it is alleged that R.H. complained to Amelia Harriman at some point. *Id.*, ¶ 149.

Notably, none of these individuals are alleged to have been on the scene of any abuse. None are alleged to have seen scabs or scars or blood. None are alleged to have conducted in depth investigations to determine what happened.[18] The defendant trooper in *Kane* did all these things and was still deemed to not have been grossly negligent. There is no way the Employee Defendants could be found grossly negligent on the facts alleged in the Complaint. Count Twelve must be DISMISSED with prejudice.

CONCLUSION

For the foregoing reasons, Defendants Edwin Kane, Melanie D'Amico, Erin Longchamp and Amelia Harriman request that all claims and allegations against them be DISMISSED with prejudice and that the Court grant such other relief as it deems just and proper.

[18] Indeed, they are chided for not having done so.

DATED at Burlington, Vermont, this day of April 2022.

By: ______________________________

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DATED at Burlington, Vermont, this day of April 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, 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 *Joint Motion to Dismiss of Defendants Harriman, D'Amico, Dale, and Longchamp* with corresponding *Memorandum of Law in Support of Joint Motion to Dismiss 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 ___________________________

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DATED at Burlington, Vermont, this 22 day of April 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.	)	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	)	

MOTION TO DISMISS OF DEFENDANTS WEINER, MARTINEZ, RUGGLES, PIETTE AND ROCHON WITH INCORPORATED MEMORANDUM OF LAW

Defendants Nicholas Weiner, David Martinez, Carol Ruggles, Tim Piette and Devin Rochon ("Moving Defendants") hereby move to dismiss Plaintiffs' Complaint against them pursuant to Federal Rules of Civil Procedure 8(a)(2) and 12(b)(6) for failure to state a claim upon which relief can be granted against them. In support, Moving Defendants submit the following incorporated Memorandum of Law.

MEMORANDUM OF LAW

Plaintiffs' Complaint should be dismissed in its entirety as to Moving Defendants for five principal reasons:

(1) Plaintiffs' conclusory and undifferentiated group pleading against all Defendants fails to factually allege any wrongdoing or state plausible claims against any of the Moving Defendants by Plaintiffs Welch, D.H., T.W. or A.L. under Counts 1-6 and 10-12 or by Plaintiffs R.H. and T.F. under Counts 8-9.

(2) Plaintiffs' civil rights conspiracy claims under 42 U.S.C. § 1985 (Counts 1-3, 8) must be dismissed as to all Moving Defendants because (a) Plaintiffs allege no factual basis for any conspiracy; (b) nor that any conspiracy was motivated by racial animus or other recognized class-based invidious discrimination; and (3) such claims are barred by the intra-corporate doctrine of conspiracy since all Defendants were employees and officials of the same public entity.

(3) Plaintiffs' claims for Eighth Amendment violations (Counts 4 and 5) fail to state a claim because no Plaintiff has alleged that he or she was imprisoned after being convicted of a crime.

(4) Plaintiffs R.H., T.F. and B.C.'s substantive Due Process claims for excessive force (Counts 5-6) against certain Moving Defendants must be dismissed because they fail to allege sufficient facts to infer that any Moving Defendant used force against them that was objectively unreasonable or more than *de minimus*.

(5) Plaintiffs fail to state any federal claim against Moving Defendants and there is no compelling reason related to judicial economy, convenience, fairness, or comity for this Court to retain supplemental jurisdiction over Plaintiffs' state law claims (Counts 10-12).

COMPLAINT ALLEGATIONS

Plaintiffs are five young adults, one minor, and the estate administrator of a deceased young person, G.W., who allege that they were subjected to abuse while residing at the Woodside Juvenile Rehabilitation Center in Essex, Vermont ("Woodside") and the Middlesex Adolescent Program in Middlesex, Vermont ("MAP") between 2016 and 2020. Compl. at 1-2.[1] All of the Plaintiffs (and Plaintiff Welch's decedent, G.W.) were minors at the time of their residence at Woodside and MAP. *See id.* at 1 (referring to Woodside and MAP residents as "juveniles" and "children").

However, none of the Plaintiffs (or Plaintiff Welch's decedent, G.W.) are alleged to have resided at these facilities because they had been charged or adjudicated as an adult for a criminal act, as distinct from a charge or adjudication for juvenile delinquency. *See id.* ¶ 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'" (quoting former 33 V.S.A. § 5801(a), repealed by 2021 Vt. Acts and Resolves No. 74, Sec. E.327)). The Complaint does not allege the racial or ethnic background of any of the Plaintiffs or of G.W.

Plaintiffs have brought this 12-count civil rights action against twenty-two individuals in their personal capacities to recover compensatory and exemplary damages. *Id.* at 1-2, 33. All Defendants are alleged to have been, "at all times relevant to this Complaint," employees and officials of the State of Vermont's Department for Children and Families ("DCF"). *Id.* ¶¶ 8-29.

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[1] Despite generalized suggestions elsewhere in the Complaint, *see, e.g.* Compl. ¶¶ 226, only one Plaintiff, A.L., factually alleges that he was ever held at MAP, which opened after Woodside's closure in 2020. *See id.* ¶ 203.

Each Plaintiff asserts claims against each of the twenty-two Defendants, pursuant to 42 U.S.C. § 1985 and § 1983, for conspiracy to violate and violation of the Eighth Amendment's ban on cruel and unusual punishment (Counts 1 & 4; Compl. ¶¶ 221-26, 236-41); the Eighth and Fourteenth Amendments' ban on excessive force (Counts 2 & 5; Compl. ¶¶ 227-29, 242-51); and the Fourteenth Amendment's right to substantive and procedural due process (Counts 3 & 6; Compl. ¶¶ 230-35, 252-60). Only Plaintiffs R.H. and T.F. bring claims, pursuant to 42 U.S.C. § 1985 and § 1983, for conspiracy to violate and violation of the First Amendment's right to petition government for redress of grievances (Counts 8 & 9; Compl. ¶¶ 267-76), which they assert against all Defendants.[2] Each Plaintiff also asserts supplemental state law claims against each of the twenty-two Defendants for Assault and Battery (Count 10; Compl. ¶¶ 281-84), Intentional Infliction of Emotional Harm (Count 11; Compl. ¶¶ 285-92) and "grossly negligent and reckless supervision" of Plaintiffs "to protect Plaintiffs from foreseeable harm." (Count 12; Compl. ¶¶ 293-97).

Plaintiffs allege that each of the Moving Defendants, Nicholas Weiner, David Martinez, Carol Ruggles, Tim Piette and Devin Rochon "was a staff member at the Woodside Juvenile Rehabilitation Center, Essex, Vermont at all times relevant to this Complaint." Compl. ¶¶ 19-23. Plaintiffs do not allege that Defendants Weiner, Martinez, Ruggles, Piette or Rochon had, at any relevant time, any DCF-conferred authority or responsibility to supervise, manage, evaluate or discipline other personnel working at Woodside or MAP. Plaintiffs also do not allege that Defendants Weiner, Martinez, Ruggles, Piette or Rochon had, at any relevant time, any DCF-

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[2] Count 7 of the Complaint is asserted by Plaintiffs R.H. and D.H. only against Defendants Schatz, Dale, D'Amico, Longchamp, Harriman, and Wolcott only for their allegedly deliberate indifference to violations of R.H. and D.H.'s Eighth and Fourteenth Amendment rights when they were allegedly placed by DCF at the Natchez Trace Youth Academy in Tennessee. *See* Compl. ¶¶ 87, 261-66.

conferred authority or responsibility to formulate or adopt rules, policies, procedures or general practices governing residents or operations at Woodside or MAP.

Like all Plaintiffs, Cathy Welch, T.W., D.H. and A.L. broadly assert Counts 1-6 and 10-12 for various constitutional and state law violations against all twenty-two Defendants, including Defendants Weiner, Martinez, Ruggles, Piette and Rochon. However, the Complaint alleges no actual facts indicating that any of these Moving Defendants committed, participated in, requested, approved, condoned, observed, ignored or were even aware of any purportedly harmful, wrongful or illegal act or omission with respect to T.W., D.H., A.L. or decedent G.W. by anyone at any time, such as physical, mental or emotional abuse, use of force, restraint, neglect, retaliation, harassment, humiliation, exploitation, punishment, or imposition upon them of isolated or secluded confinement, *e.g.*, placement in Woodside's "North Unit." *See* Compl. ¶¶ 119-31 (no factual allegations regarding D.H. that name any Moving Defendant); *id.* ¶¶ 150-58 (no factual allegations regarding T.W. that name any Moving Defendant); *id.* ¶¶ 159-70 (no factual allegations regarding decedent G.W. that name any Moving Defendant); *id.* ¶¶ 195-220 (no factual allegations regarding A.L. that name any Moving Defendant).[3]

The remaining Plaintiffs – R.H., T.F. and B.C. – also assert Counts 1-6 and 8-12 against all Defendants generally, including Defendants Weiner, Martinez, Ruggles, Piette and Rochon. However, each of these three Plaintiffs allege that only some, but not all of these Moving Defendants participated in physically restraining them at Woodside during certain specific

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[3] The Complaint does allege that a video reflects unnamed "Woodside staff rushing into [G.W.'s] cell and pushing her against the wall with a large riot shield." Compl. ¶ 168. The Complaint also alleges that unnamed "Woodside staff members" in 2018 "repeatedly subjected [A.L.] to painful restraints" and that unnamed "staff requests to send A.L. into solitary confinement in Woodside's North Unit" were allegedly approved by co-Defendant Steward. *Id.* ¶¶ 197, 200.

instances.[4] For example, the Complaint alleges that R.H. was "physically restrained about ten times" between March 2018 and December 2018 by Woodside staff members, including Moving Defendants Weiner Martinez, and Rochon. *Id.* ¶ 143. However, the Complaint alleges no harm, wrongful act or omission against R.H. by the other Moving Defendants -- Ruggles and Piette.

Likewise, T.F. alleges that on June 27, 2018 she was "physically restrained" by Moving Defendant Piette and co-Defendant Bunnell "and dragged across the floor by her feet to her cell." *Id.* ¶ 175. Yet T.F. alleges no harm, wrongful act or omission against her at any time by the other Moving Defendants -- Weiner, Martinez, Ruggles and Rochon.

Finally, the Complaint alleges that, on August 25, 2018, Moving Defendant Ruggles assisted "Defendant Hatin and two other male Woodside staff members" in pinning B.C. to the floor of her room in Woodside's North Unit and "forcibly remov[ing] her clothing." *Id.* ¶ 186. However, B.C. alleges no harm, wrongful act or omission against her by Moving Defendants Weiner, Martinez, Piette and Rochon.

In charging that certain specifically named Moving Defendants participated in physically restraining them, neither R.H., T.F. nor B.C. allege the facts or circumstances leading up to each restraint, such as actions or behaviors by R.H., T.F. or B.C. that may have prompted Woodside staff members to restrain them. Second, the Complaint alleges few facts about the degree, amount or specific type of physical force that was applied to R.H., T.F. and B.C. by each of the

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[4] In contrast to R.H., T.F. and B.C.'s factual allegations of specific physical restraint episodes involving only certain named Moving Defendants, Counts 1-6 and 10 of the Complaint conclude or suggest that <u>all</u> "Defendants conspired . . to physically restrain [all Plaintiffs] in violation of Plaintiffs' constitutional rights," Compl. ¶¶ 226, 229, 235, that all "Defendants physically restrained [all Plaintiffs] in violation of Plaintiffs' constitutional rights," *id.* ¶¶ 241, 251, 260, that all "Defendants used such force as was objectively unreasonable, excessive, and conscience shocking," *id.* ¶ 247, and that all "Defendants repeatedly . . . physically assaulted" all Plaintiffs. *Id.* ¶ 282.

Moving Defendants during these restraint episodes.[5] Third, the Complaint generally does not allege facts concerning the nature, severity or permanence of any physical pain or injury that R.H., T.F. or B.C. may have experienced as a result of these restraint episodes.[6] Fourth, R.H., T.F. and B.C. do not allege any facts about the intent, motive or state of mind of any of the Moving Defendants in supposedly participating in these restraint episodes.

Beyond the episodes of physical restraint alleged by R.H., T.F. and B.C. involving some, but not all Moving Defendants, these Plaintiffs do not allege any facts indicating that any of the Moving Defendants -- Weiner, Martinez, Ruggles, Piette or Rochon – engaged in any other kind of purported harm, wrongful act or omission against them. In particular, the Complaint does not allege facts indicating that any named Moving Defendants ever ordered, requested, or otherwise participated in the placement of any of the Plaintiffs in isolated or secluded confinement, such as in Woodside's "North Unit." The Complaint also does not allege facts indicating that any named Moving Defendant received or was aware of any complaints or grievances by any of the Plaintiffs about their treatment at Woodside or MAP, nor does the Complaint allege facts suggesting any named Moving Defendants participated in efforts to retaliate against any Plaintiff for such grievances or complaints. Finally, the Complaint does not allege facts indicating that

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[5] It is generally alleged that "[u]nder the direction of Defendant Simons, Woodside staff members, including [Moving] 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." Compl. ¶ 43. However, the Complaint does not allege whether any of the Plaintiffs in this action, as distinct from other non-party juvenile residents of Woodside or MAP, were restrained in this manner.

[6] T.F. does allege that, during the June 27, 2018 restraint-and-dragging episode in which Moving Defendant Piette allegedly participated, "T.F. suffered friction burns on her body." Compl. ¶ 176. T.F. does not describe the location, severity or duration of these "friction burns."

any named Moving Defendants reached an agreement or understanding with each other or with any other co-Defendant to harm or commit some other wrongful act against any Plaintiff.

ARGUMENT

I. Rule 8(a) and Rule 12(b)(6) Standards

To satisfy Rule 8(a)(2)'s requirement that a complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 8(a)(2), and to survive a Rule 12(b)(6) motion to dismiss, a complaint must 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). "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). This "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678.

In evaluating a Rule 12(b)(6) motion, the district court must "accept as true all factual allegations and draw from them all reasonable inferences," but need not "credit conclusory allegations or legal conclusions couched as factual allegations." *Hernandez v. United States*, 939 F.3d 191, 198 (2d Cir. 2019). "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555, 557). Moreover, "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged -- but it has not 'show[n]'—'that the pleader is entitled to relief.'" *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)).

Thus, a complaint with allegations that "are so vague as to fail to give the defendants adequate notice of the claims against them" is subject to dismissal. *Sheehy v. Brown*, 335 F. App'x 102, 104 (2d Cir. 2009). Dismissal is also appropriate when "it is clear from the face of the complaint, and matters of which the court may take judicial notice, that the plaintiff's claims are barred as a matter of law," *Conopco, Inc. v. Roll Int'l*, 231 F.3d 82, 86 (2d Cir. 2000), because "the allegations in [the] complaint however true, could not raise a claim of entitlement to relief." *Twombly*, 550 U.S. at 558.

II. The Complaint's Reliance on Conclusory Group Pleading Fails to State Claims Against Any of the Moving Defendants by Plaintiffs Welch, D.H., T.W. and A.L. Under Counts 1-6, 10-12 or by Plaintiffs R.H. and T.F. Under Counts 8-9

All federal and state law causes of action (Counts 1-6 and 10-12) asserted by Plaintiffs D.H., T.W., A.L. and Cathy Welch on behalf of the Estate of G.W. against the Moving Defendants -- Weiner, Martinez, Ruggles, Piette and Rochon -- must be dismissed for the fundamental reason that the Complaint makes no specific factual allegations of harm or wrongdoing committed by any of these Defendants against these particular Plaintiffs to support its undifferentiated legal conclusions against all Defendants. Likewise, Plaintiffs R.H. and T.F.'s Counts 8 and 9 must be dismissed as to the Moving Defendants because the Complaint fails to allege any facts that would indicate Moving Defendants Weiner, Martinez, Ruggles, Piette or Rochon's violation or participation in any conspiracy to violate these Plaintiffs' First Amendment rights to petition government for redress of grievances.

"Where a complaint names multiple defendants, that complaint must provide a plausible factual basis to distinguish the conduct of each of the defendants." *Ochre LLC v. Rockwell Architecture Plan. & Design, P.C.*, No. 12 CIV. 2837 KBF, 2012 WL 6082387, at *6 (S.D.N.Y. Dec. 3, 2012), *aff'd*, 530 F. App'x 19 (2d Cir. 2013). Likewise, when multiple plaintiffs assert the same legal claims against multiple defendants, the complaint must "state with particularity

what each Defendant did to each Plaintiff." *Peter v. Wojcicki*, No. 1:22-CV-00051-KWR-LF, 2022 WL 228204, at *1 (D.N.M. Jan. 26, 2022).

Rule 8(a)(2) "requires, at a minimum, that a complaint give each defendant fair notice of what the plaintiff's claim is and the ground upon which it rests." *Atuahene v. City of Hartford*, 10 F. App'x 33, 34 (2d Cir. 2001). A complaint that (1) "fail[s] to differentiate among the defendants, alleging instead violations by 'the defendants;'" (2) "fail[s] to identify which defendants were alleged to be responsible for which alleged violations;" or (3) "lump[s] all the defendants together in each claim and provid[es] no factual basis to distinguish [the defendants'] conduct" fails this Rule 8(a)(2) standard and is subject to dismissal under Rule 12(b)(6). *Id.*

Such "nonspecific allegations 'that rely on group pleading and fail to differentiate as to which defendant was involved in the alleged unlawful conduct are insufficient to state a claim.'" *Wiley v. Baker*, No. 2:20-CV-154-WKS-JMC, 2021 WL 2652869, at *5 n. 4 (D. Vt. Jan. 28, 2021) (quoting *Leneau v. Ponte*, No. 1:16-CV-776-GHW, 2018 WL 566456, at *15 (S.D.N.Y. Jan 25, 2018)). Therefore, each "plaintiff must provide facts sufficient to allow each named defendant to have a fair understanding of what the plaintiff is complaining about and to know whether there is a legal basis for recovery." *Hauff v. State Univ. of New York*, 425 F. Supp. 3d 116, 126-27 (E.D.N.Y. 2019).

In the context of a federal civil rights action brought pursuant to 42 U.S.C. § 1983, group pleading is inconsistent with the requirement "a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution." *Iqbal*, 556 U.S. at 676. "Because the personal involvement of a defendant is a prerequisite to an award of damages under § 1983, a plaintiff cannot rely on a group pleading against all

defendants without making specific individual factual allegations." *Spring v. Allegany-Limestone Cent. Sch. Dist.*, 138 F. Supp. 3d 282, 293 (W.D.N.Y. 2015).[7]

In this case, Counts 1-6 and 10-12 of the Complaint impermissibly lump the twenty-two Defendants together and misleadingly assert that all "Defendants" have committed various constitutional and state law torts against all "Plaintiffs." *See* Compl. ¶¶ 226, 229, 235, 241, 251, 260, 282, 287-88, 291, 296. However, the factual allegations of the Complaint clearly do not support these "labels and conclusions" or Plaintiffs' "formulaic recitation of the elements of a cause of action" as to all Plaintiffs and all Defendants. *Twombly*, 550 U.S. at 555, 557; *see also Iqbal*, 556 U.S. at 679 (although "legal conclusions can provide the framework of a complaint, they must be supported by factual allegations."); *Stewart v. Loring Estates LLC*, No. 18-CV-2283 (MKB), 2018 WL 2390145, at *3 (E.D.N.Y. May 18, 2018) ("Plaintiffs must set forth sufficient factual content to allow the district court 'to draw the reasonable inference' that each defendant named in the amended complaint is liable for the misconduct or harm caused to each Plaintiff named in the amended complaint and that such conduct is in violation of a federal constitutional or statutory right" (internal citation omitted; emphasis added)).

The speciousness of the Complaint's group pleading approach in Counts 1-6 and 10-12 is illustrated most clearly by the absence of any factual allegations against the Moving Defendants with respect to their conduct toward T.W., D.H., A.L. or decedent G.W. The Complaint simply alleges no facts at all indicating that any of the Moving Defendants -- Weiner, Martinez, Ruggles, Piette or Rochon -- committed, participated in, requested, approved, condoned,

[7] *Gonzalez v. Yepes*, No. 3:19-CV-00267 (CSH), 2019 WL 2603533, at *7 (D. Conn. June 25, 2019) ("As a corollary of the personal involvement requirement, complaints that rely on 'group pleading' and 'fail to differentiate as to which defendant was involved in the alleged unlawful conduct are insufficient to state a claim'" (citation omitted)).

observed, ignored or were even aware of any purportedly harmful, wrongful or illegal act or omission with respect to T.W., D.H., A.L. or decedent G.W. *See* Compl. ¶¶ 119-31, 150-58, 159-70, 195-220.

Accordingly, Plaintiffs T.W., D.H., A.L. and Welch's Counts 1-6 and 10-12 have no factual basis with respect to any of the Moving Defendants and must therefore be dismissed as to these Defendants. *See Ingris v. Borough of Caldwell*, No. 14–855 (ES), 2015 WL 3613499, at *5 (D.N.J. June 9, 2015) (holding that plaintiff "engaged in impermissibly vague group pleading" by "mak[ing] collective references to twenty-three different defendants" and "when pleading each of his proposed causes of action" had "refer[red] to 'all defendants named in this count', without describing what any particular defendant actually did, or how those alleged activities might be actionable under the law"). For the same reason, Plaintiffs R.H. and T.F.'s Counts 8 and 9 for conspiracy to violate and violation of their First Amendment right to petition government for redress of grievances, broadly asserted against all twenty-two Defendants, *see* Compl. ¶¶ 267-76, must also be dismissed as to the Moving Defendants.

Counts 8 and 9 charge, in an indiscriminate group pleading fashion, that all "Defendants retaliated" and "conspired to retaliate against R.H. and T.F. after they registered complaints" about their treatment at Woodside. *Id.* ¶¶ 271, 276.[8] Although R.H. does allege that Moving

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[8] To survive a motion to dismiss their First Amendment retaliation claim, Count 9, Plaintiffs R.H. and T.F. must make "the following non-conclusory allegations: '(1) that the speech or conduct at issue was protected, (2) that the defendant took adverse action against the plaintiff, and (3) that there was a causal connection between the protected speech and the adverse action.'" *Rheaume v. Pallito*, No. 2:15-CV-135-WKS-JMC, 2016 WL 3277318, at *9 (D. Vt. Apr. 20, 2016), *report and recommendation adopted*, No. 2:15 CV 135, 2016 WL 3344223 (D. Vt. June 14, 2016) (quoting *Dawes v. Walker*, 239 F.3d 489, 492 (2d Cir. 2001)).

Here, R.H. and T.F. do not allege any actual facts indicating that any of the Moving Defendants took "adverse action" against them because of their alleged complaints concerning their treatment at Woodside.

Defendants Weiner Martinez, and Rochon physically restrained him, *id.* ¶ 143, and T.F. alleges that Moving Defendant Piette physically restrained her, *id.* ¶ 175, neither R.H. nor T.F. allege that these or any other Moving Defendants engaged in any other kind of purported harm, wrongful act or omission against them. Specifically, the Complaint does not allege facts indicating that any named Moving Defendant received or was aware of any complaints or grievances by any of the Plaintiffs about their treatment at Woodside, nor does the Complaint allege facts suggesting any named Moving Defendants participated in efforts to retaliate against any Plaintiff for such grievances or complaints. Thus, Counts 8 and 9 must be dismissed as to Moving Defendants Weiner, Martinez, Ruggles, Piette and Rochon pursuant to Federal Rules of Civil Procedure 8(a)(2) and 12(b)(6).

Plaintiffs may respond that pleading the Moving Defendants' Section 1983 liability for constitutional violations does not require them to allege that the Moving Defendants directly participated in any of the alleged violations, such as the unreasonable use of physical restraints or imposition of solitary confinement, only that the Moving Defendants were deliberately indifferent to this conduct by other Woodside staff or officials and failed to stop these violations by interceding on behalf of the Plaintiffs. *See* Compl. ¶¶ 240, 256 (concluding that "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"); *id.* ¶ 248 (asserting that "[n]one 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.").

However, such an argument would be misplaced as to the Moving Defendants. First, in assessing whether the Section 1983 'personal involvement' requirement is met with respect to the Moving Defendants, who were all Woodside staff members, Compl. ¶¶ 19-23, and "not

supervisory officials," the Court should "consider only whether they participated directly in the violation," not whether they "failed to remedy the wrong" after the fact or "exhibited deliberate indifference to the rights of" Plaintiffs "by failing to act on information indicating that unconstitutional acts were occurring," which are all ways for the Court to analyze Section 1983 "personal involvement . . . in the context of supervisory defendants" only, not non-supervisory Woodside staff members. *Brandon v. Kinter*, 938 F.3d 21, 36-37 (2d Cir. 2019).

Second, although "[a] law enforcement officer has an affirmative duty to intercede on the behalf of a citizen whose constitutional rights are being violated in his presence by other officers," *O'Neill v. Krzeminski*, 839 F.2d 9, 11 (2d Cir. 1988), "[l]iability will attach only when (1) the officer had a realistic opportunity to intervene and prevent the harm; (2) a reasonable person in the officer's position would know that the victim's constitutional rights were being violated; and (3) the officer does not take reasonable steps to intervene." *Jean-Laurent v. Wilkerson*, 438 F. Supp. 2d 318, 327 (S.D.N.Y. 2006), *aff'd*, 461 F. App'x 18 (2d Cir. 2012).[9] Here, even if the duty of law enforcement officers to intervene were applicable to non-law enforcement DCF staff members like the Moving Defendants, the Complaint does not allege facts from which it could be inferred that a Moving Defendant had a "realistic opportunity to intervene and prevent" harm to Plaintiffs by others, or that a Moving Defendant knew or should have known that a Plaintiff's constitutional rights were being violated by others. Plaintiffs' generalized and factually devoid assertions to the contrary, *see* Compl. ¶¶ 240, 248, 256, are

[9] "[W]hen considering the reasonableness of any opportunity to intervene, one must consider both (a) the duration of the constitutional violation, and (b) the defendant's presence and proximity during the use of the constitutional violation." *Thomas v. City of Troy*, 293 F. Supp. 3d 282, 296 (N.D.N.Y. 2018). However, "[a]n officer's mere presence at the scene is not enough to establish liability for a failure to intervene." *Conroy v. Caron*, 275 F. Supp. 3d 328, 354 (D. Conn. 2017).

merely "legal conclusions couched as factual allegations," *Hernandez*, 939 F.3d at 198, that are insufficient to avoid dismissal.

III. Plaintiffs' Section 1985 Civil Rights Conspiracy Claims (Counts 1-3, 8) Are Deficiently Pleaded and Legally Untenable

In Counts 1-3 of the Complaint, Plaintiffs assert that all twenty-two "Defendants conspired to unlawfully isolate [all] Plaintiffs in seclusion cells in Woodside North Unit [and] to physically restrain them in violation of Plaintiffs' constitutional rights [and] . . . in violation of 42 U.S.C. § 1985." Compl. ¶¶ 226, 229, 235. In Count 8, Plaintiffs R.H. and T.F. claim that all "Defendants conspired to retaliate against R.H. and T.F. after they registered complaints" about their treatment at Woodside "in violation of 42 U.S.C. § 1985." Compl. ¶ 271.

However, Plaintiffs have failed to state civil rights conspiracy claims under 42 U.S.C. § 1985 because (1) the Complaint does not allege any specific factual basis for a conspiracy between any of the Defendants to violate the civil rights of any Plaintiffs; (2) the Complaint does not allege that any purported conspiracy was motivated by racial animus or other recognized class-based, invidious discrimination against Plaintiffs; and (3) such claims are barred by the intra-corporate doctrine of conspiracy since all the Defendants, at times relevant to the Complaint, were employees and officials of the same public entity, DCF, and are therefore deemed legally incapable of conspiring with each other.

"Section 1985 prohibits conspiracies to deprive individuals of civil rights." *Barron v. Pallito*, No. 1:09-CV-209, 2011 WL 2532589, at *7 (D. Vt. Apr. 27, 2011). "A conspiracy claim under Section 1985(3)[10] requires a plaintiff to allege: 1) a conspiracy; 2) for the purpose of

[10] Although the Complaint does not make it clear whether Plaintiffs' Section 1985 claims assert violations of "§ 1985(1), § 1985(2) or § 1985(3), § 1985(3) is the only subsection that could possibly apply to this case." *Johnson ex rel. Johnson v. Columbia Univ.*, No. 99 CIV. 3415 (GBD), 2003 WL 22743675, at *15 (S.D.N.Y. Nov. 19, 2003).

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." *Segar v. Barnett*, No. 2:20-CV-126, 2020 WL 6565131, at *4 (D. Vt. Nov. 9, 2020) (quoting *Dolan v. Connelly*, 794 F.3d 290, 296 (2d Cir. 2015)).

"The mere assertion of a conspiracy is insufficient," *Barron*, 2011 WL 2532589, at *7, and "[a] complaint alleging a conspiracy to violate civil rights is held to heightened pleading standards." *Johnson*, 2003 WL 22743675, at *14. "A complaint containing only conclusory, vague, or general allegations of conspiracy to deprive a person of constitutional rights cannot withstand a motion to dismiss." *Sommer v. Dixon,* 709 F.2d 173, 175 (2d Cir. 1983).[11]

Therefore, "[i]n order to maintain an action under Section 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," *Bain v. Hofmann*, No. 106-CV-222, 2010 WL 3927329, at *9 (D. Vt. Aug. 26, 2010) (quoting *Webb,* 340 F.3d at 110–11), "where one individual acts in furtherance of the objective conspiracy, and each member has knowledge of the nature and scope of the agreement." *Dove v. Fordham Univ.,* 56 F. Supp. 2d 330, 337 (S.D.N.Y.1999).

In this case, the Complaint merely asserts that all Defendants "conspired" to violate the constitutional rights of all Plaintiffs, Compl. ¶¶ 226, 229, 235, but alleges no actual facts from

[11] *See, e.g., Murphy v. Bd. of Educ. of Rochester City Sch. Dist.*, 273 F. Supp. 2d 292, 324 (W.D.N.Y. 2003), *aff'd*, 106 F. App'x 746 (2d Cir. 2004) (finding plaintiff's "conclusory assertion" that defendants were "working 'in concert'" to be insufficient to state a Section 1985 conspiracy claim).

which the Court could infer a specific meeting of the minds between particular Defendants to violate the rights of any Plaintiff. *See McCain v. United States*, No. 2:14-CV-92, 2015 WL 1221257, at *7 (D. Vt. Mar. 17, 2015) (dismissing Section 1985 claims because complaint "does not allege any facts to suggest that" defendants "entered into a meeting of the minds . . . to achieve an unlawful end").[12] Rather, it appears that Plaintiffs have only "alleged that defendants violated [their] constitutional rights, and ha[ve] then simply tacked on a conclusory allegation that those violations were committed pursuant to a conspiracy . . . [S]uch 'generic and conclusory terms' are insufficient to make out a § 1985 claim." *Doe v. Selsky*, 973 F. Supp. 2d 300, 305 (W.D.N.Y. 2013) (citation omitted).

For instance, the Complaint does not "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). In addition, the Complaint is devoid of any factual allegations setting forth "the roles of each of the defendants who allegedly participated in [the] conspiracy." *Laverpool v. New York City Transit Auth.,* 760 F. Supp. 1046, 1056 (E.D.N.Y.1991). Likewise, Plaintiffs fail to "allege with at least some particularity overt acts which defendants engaged in which were reasonably related to the promotion of the claimed conspiracy." *Johnson*, 2003 WL 22743675, at *14. Clearly, Plaintiffs' fact-free accusations of a civil rights conspiracy fail to meet the "heightened pleading standards" for such claims, *id.* at *15, and must be dismissed.

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[12] *See also Gadreault v. Grearson*, No. 2:11-CV-63, 2011 WL 4915746, at *6 (D. Vt. Oct. 14, 2011) ("The conspiracy claims presented here are highly conclusory. Aside from the bare allegation that a judge and opposing counsel conspired together, there are no facts to support a claim that these Defendants had an agreement to act in concert.").

For a Section 1985(3) claim to survive a motion to dismiss, "[t]he conspiracy must also be motivated by some racial or perhaps otherwise class-based, invidious discriminatory animus." *Dolan,* 794 F.3d at 296. "[S]ection 1985 -- unlike section 1983—is a tool only available to address race-based discrimination. Unlike section 1983 which functions to provide a federal remedy for a wide variety of constitutional torts, section 1985(3) remains close to the historical purpose of its enactment during the era of Reconstruction as a defense against racist conspiracies by groups such as the Ku Klux Klan." *Hovey v. Vermont*, No. 5:16-CV-266, 2017 WL 2167123, at *6 (D. Vt. May 16, 2017) (internal citations omitted).

Here, Plaintiffs' Section 1985 claims must be dismissed because the Complaint does not allege any facts suggesting that the Defendants' purported conspiracy to violate Plaintiffs' civil rights was motivated by racial animus. *See Segar*, 2020 WL 6565131, at *4 ("Because Plaintiff's proposed Complaint lacks allegations of racially motivated discrimination, he fails to state a claim under § 1985(3)"). Indeed, the Complaint does not even allege the racial or ethnic background of any of the Plaintiffs.

To the extent that Plaintiffs would contend their Section 1985(3) conspiracy claims survive dismissal because the Defendants engaged in class-based, invidious discrimination against them, not because of their race, but on account of their age or juvenile status at the time of Defendants' asserted civil rights violations, such a theory fails. *See Jenkins v. Miller*, 983 F. Supp. 2d 423, 458 (D. Vt. 2013) (recognizing that some "[l]ower federal courts . . . have recognized potential § 1985(3) discrimination claims on the basis of gender, religion, national origin, ethnicity, mental retardation, disability and political affiliation.").

"[T]o satisfy the class-based animus requirement" of Section 1985(3)" the putative class generally must possess certain "inherited or immutable characteristics." *Dolan*, 794 F.3d at 296,

that render its members "a discrete and insular minority . . . ." *Haverstick Enters., Inc. v. Financial Fed. Credit, Inc.,* 32 F.3d 989, 994 (6th Cir.1994). Thus, "incarcerated felons are not a class protected by 42 U.S.C. § 1985." *Cusamano v. Sobek*, 604 F. Supp. 2d 416, 433 n.26 (N.D.N.Y. 2009). Here, the Plaintiffs' one-time status as minors who were held at Woodside for delinquency offenses is not an inherited or immutable characteristic the rendered them a discrete and insular minority.

Other courts have noted that Section 1985 "should extend beyond its racial boundaries only when a class has been afforded suspect or quasi-suspect classification or when Congress has provided the class special protection." *Martin v. New York State Dep't of Corr. Servs.,* 115 F.Supp.2d 307, 316 (N.D.N.Y. 2000). Under this standard, Plaintiffs do not satisfy the Section 1985 class-based discriminatory animus requirement as a putative class of minors held at Woodside since "juvenile delinquency is not a suspect classification for purposes of equal protection analysis," *Felton v. Fayette Sch. Dist.*, 875 F.2d 191, 193 (8th Cir. 1989) and "[a]ge has never been held to be a suspect classification" either. *Garcia v. Hoke*, No. CV-88-2635, 1990 WL 137400, at *5 (E.D.N.Y. July 3, 1990), *aff'd*, 932 F.2d 956 (2d Cir. 1991).

A final reason to dismiss Plaintiffs' Section 1985 conspiracy claims (Counts 1-3, 8) for failure to state a claim is "the doctrine of intra-corporate (or intra-enterprise) conspiracy" which holds that "officers, agents and employees of a single corporate or municipal entity, each acting within the scope of his or her employment, are legally incapable of conspiring together." *Rudavsky v. City of S. Burlington*, No. 2:18-CV-25, 2018 WL 4639096, at *5 (D. Vt. Sept. 27, 2018).

"The doctrine, which began in cases involving corporations, has been extended to allegations of a conspiracy involving employees of a public entity." *Shakur v. Graham*, No.

9:14-CV-00427 MAD, 2015 WL 1968492, at *17 (N.D.N.Y. May 1, 2015). In particular, district courts in this Circuit have regularly applied the intra-corporate conspiracy doctrine to bar conspiracy claims against employees and officials of state governments. *See Cusamano*, 604 F. Supp. 2d at 469-70 (noting that since district court had "found seven district court cases from within this Circuit in which the intracorporate conspiracy doctrine has been applied with regard to conspiracy claims against the State [of New York], and only one district court case in which it has not been so applied, it appears to me that the intracorporate conspiracy doctrine does apply to cases in which the entity is the State.").[13] The Second Circuit has also joined several other Circuits in expressly "extending that 'intracorporate conspiracy doctrine' to the context of conspiracies to interfere with civil rights in violation of 42 U.S.C. § 1985." *Federal Ins. Co. v. United States*, 882 F.3d 348, 368 n.14 (2d Cir. 2018).[14]

"There is an exception to the intra-corporate conspiracy doctrine that applies 'to individuals within a single entity when they are pursuing personal interests wholly separate and apart from the entity.'" *Rudavsky*, 2018 WL 4639096, at *6 (quoting *Quinn v. Nassau Cnty.*

[13] *See also Towns v. Stannard*, No. 116CV01545BKSDJS, 2017 WL 11476416, at *4 (N.D.N.Y. Dec. 20, 2017) ("[T]he intracorporate conspiracy doctrine is plainly applicable to Defendants as it is undisputed that they were all employees of the New York State Police at the time of the incident."); *Liner v. Fischer*, No. 11 CIV. 6711 PAC JLC, 2013 WL 4405539, at *6 n.12 (S.D.N.Y. Aug. 7, 2013) ("Because all four of the defendants worked for the same corporate entity, DOCCS [New York State Department of Correctional Services], and were acting within the scope of their employment with regard to the alleged conduct, the conspiracy claims are further subject to dismissal under the intracorporate conspiracy doctrine.").

[14] The Supreme Court has noted that "[t]here is a division in the courts of appeals . . . respecting the validity or correctness of the intracorporate-conspiracy doctrine with reference to § 1985 conspiracies" and has expressly declined to "approv[e] or disapprov[e] the intracorporate-conspiracy doctrine's application in the context of an alleged § 1985(3) violation," but observed that because "courts are divided as to whether or not a § 1985(3) conspiracy can arise from official discussions between or among agents of the same entity [this fact] demonstrates that the law on the point is not well established" for purposes of the qualified immunity doctrine. *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1868 (2017).

Police Dep't, 53 F. Supp. 2d 347, 360 (E.D.N.Y. 1999)). "This 'personal stake' exception applies 'where law enforcement allegedly exercises official duties in unconstitutional ways in order to secure personal benefit.'" *Id.* (quoting *Alvarez v. City of New York*, No. 11 Civ. 5464(LAK), 2012 WL 6212612, at *3 (S.D.N.Y. Dec. 12, 2012)). However, "in order to allege facts plausibly suggesting that individuals were pursuing personal interests wholly separate and apart from the entity, more is required of a plaintiff than simply alleging that the defendants were motivated by personal bias against the plaintiff." *Cusamano*, 604 F. Supp. 2d at 469-70.

In this case, Plaintiffs allege that all Defendants were "at all times relevant to this Complaint," employees and officials of the same public entity – the State of Vermont's Department for Children and Families. Compl. ¶¶ 8-29. There is also "no allegation that any" Defendant "engaged in harmful or unconstitutional conduct with the goal of securing a personal benefit." *Rudavsky*, 2018 WL 4639096, at *6. Accordingly, the Second Circuit's adoption of the intra-corporate conspiracy doctrine bars Plaintiffs' Section 1985 civil rights conspiracy claims and Counts 1-3 and 8 must be dismissed as a matter of law.

IV. Plaintiffs' 8th Amendment Claims (Counts 4-5) Do Not Apply to This Action

"The Eighth Amendment applies 'only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions.... [T]he State does not acquire the power to punish with which the Eighth Amendment is concerned until after it has secured a formal adjudication of guilt in accordance with due process of law.'" *DeShaney v. Winnebago Cnty. Dep't of Social Servs.*, 489 U.S. 189, 199 n. 6 (1989) (citation omitted). Therefore, when plaintiffs are "held in non-criminal custody as juveniles" courts should "analyze their excessive force claims under the Due Process Clause of the Fourteenth Amendment," rather than the Eighth Amendment. *G.B. ex rel. T.B. v. Carrion*, No. 09CIV10582PACFM, 2012 WL 13071817, at *16 (S.D.N.Y. Jan. 19, 2012), *aff'd*, 486 F. App'x 886 (2d Cir. 2012); *see also*

Jackson v. Johnson, 118 F. Supp. 2d 278, 287 (N.D.N.Y. 2000), *aff'd in part, dismissed in part*, 13 F. App'x 51 (2d Cir. 2001) (concluding that plaintiff held in New York Department for Youth juvenile facility "was adjudicated a juvenile delinquent in a noncriminal proceeding and placed in NYS custody pursuant to a Family Court order. Pursuant to New York State law, [plaintiff] was not convicted of a crime and was not incarcerated at the time of the events complained of. Therefore, the Eighth Amendment ban on cruel and unusual punishment is inapplicable in this case.").[15]

In this case, none of the Plaintiffs have alleged that they were held at Woodside or MAP because they had been convicted of a crime. To the extent that the Plaintiffs were held at Woodside or MAP because they had "been adjudicated or charged with delinquency" rather than a "criminal act," Compl. ¶ 32 (quoting repealed 33 V.S.A. § 5801(a)), then the Eight Amendment's ban on cruel and unusual punishment would not apply in this action and Complaint Counts 4 and 5 (to the extent that the latter relies upon the Eight Amendment) must be dismissed for failure to state a claim.[16]

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[15] *Cf. C.P.X. through S.P.X. v. Garcia*, 450 F. Supp. 3d 854, 903 n.19 (S.D. Iowa 2020) ("In Iowa, adjudications or dispositions in juvenile delinquency proceedings are not deemed criminal convictions and such adjudications are viewed as 'special proceedings that serve as an alternative to the criminal prosecution of a child.' Thus, the Eighth Amendment is not typically applicable to claims of students at [youth reform school] concerning the conditions of their confinement") (citations omitted).

[16] Under Vermont law, "an order of the court in a delinquency proceeding cannot 'be deemed a conviction of crime,' and the purpose of the Juvenile Proceedings Act is to 'remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior and to provide supervision, care, and rehabilitation.'" *In re D.C.*, 2016 VT 72, ¶ 21, 202 Vt. 340, 354, 149 A.3d 466, 474 (quoting, respectively, 33 V.S.A. §§ 5202(a)(1)(A), 5101(a)(2)).

V. Plaintiffs R.H., T.F. and B.C. Have Insufficiently Pleaded their 14th Amendment Substantive Due Process Claims (Counts 5-6) Against Moving Defendants for Use of Excessive Force

Plaintiffs R.H., T.F. and B.C. allege that certain Moving Defendants "physically restrained" them while they were Woodside residents, *see* Compl. ¶¶ 143, 175, 186, which Plaintiffs assert, in Counts 5 and 6, constitutes "excessive force" prohibited by the Fourteenth Amendment's guarantee of substantive due process. *See id.* ¶¶ 251, 260.[17] "For excessive force claims brought under the Fourteenth Amendment, the Supreme Court has listed out six non-exclusive factors that 'may bear on the reasonableness or unreasonableness of the force used: the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff's injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting.'" *Rudavsky v. City of S. Burlington*, No. 2:18-CV-25, 2021 WL 1894780, at *8 (D. Vt. May 11, 2021) (quoting *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015)).[18]

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[17] The Complaint's Count 6 suggests in conclusory fashion that all Defendants' supposed physical restraint and imposition of isolated confinement on all Plaintiffs also amounts to a denial of "procedural due process." Compl. ¶ 260. However, the Complaint does not allege any facts indicating what process Plaintiffs contend that they were due in relation to their restraint and confinement, nor describe how any of the Moving Defendants were personally involved, sufficient to meet the Section 1983 'personal involvement' requirement, in the deprivation of these procedural protections.

[18] "Additionally, claims for excessive force under the Fourteenth Amendment must involve force that is either 'more than de minimis' or 'repugnant to the conscience of mankind.' " *Lewis v. Huebner*, No. 17-CV-8101, 2020 WL 1244254, at *5 (S.D.N.Y. Mar. 16, 2020) (quoting *United States v. Walsh*, 194 F.3d 37, 48 (2d Cir. 1999)); *see also Wright v. Goord*, 554 F.3d 255 (2d Cir. 1997) (grabbing of prisoner did not constitute unconstitutional excessive force); *Boddie v. Schnieder*, 105 F.3d 857, 862 (2d Cir. 1997) (inmate's allegations that he was bumped, grabbed, elbowed, and pushed by corrections officers were insufficient to establish a constitutional violation).

Accordingly, to avoid dismissal for failure to state a claim, a plaintiff asserting a Fourteenth Amendment excessive force claim must allege non-conclusory facts sufficient for the district court "to plausibly infer that the force allegedly used against plaintiff was objectively unreasonable." *Vasquez v. Schenectady Cnty. Corr. Facility*, No. 920CV0785TJMCFH, 2020 WL 6482029, at *5 (N.D.N.Y. Nov. 4, 2020) (dismissing for failure to state a claim pretrial detainee's Fourteenth Amendment excessive force claim where "amended complaint lacks any details regarding the manner or duration of force used against plaintiff, or the events that precipitated the use of force. Instead, plaintiff conclusorily alleges only that he 'was assaulted by five correctional officers[.]' Moreover, with respect to plaintiff's injuries, the amended complaint alleges only that plaintiff suffered 'bad bruising and swelling' in his 'legs and back' as a result of the use of force incident, without any details regarding the duration of these injuries, plaintiff's level of pain, or ensuing limitations on his day-to-day activities" (citation omitted)).[19]

In this case, Plaintiffs R.H., T.F. and B.C. fail to allege sufficient facts about the physical restraint episodes involving the Moving Defendants for the Court to plausibly infer, based on the Supreme Court's *Kingsley* factors, that any Moving Defendant applied force to R.H., T.F. or

[19] *See also Owens v. Buckman*, No. 4:21-CV-P96-JHM, 2022 WL 508901, at *4 (W.D. Ky. Feb. 18, 2022) ("Plaintiff's one-sentence allegation against Defendant Hilton" that he told Plaintiff to "pack up" and then "for no reason" pepper-sprayed him "is too conclusory and lacking in factual specificity to state a Fourteenth Amendment claim for excessive force. Thus, this claim will be dismissed for failure to state a claim upon which relief may be granted."); *Oliver v. Pemiscot Cnty. Jail*, No. 1:21-CV-126 SNLJ, 2021 WL 5906237, at *4 (E.D. Mo. Dec. 14, 2021) ("Here, Plaintiff does not provide enough factual allegations to suggest that the force used by Walker was purposely or knowingly unreasonable. Plaintiff alleges that Walker tasered him in the chest and sprayed mace in his face. Plaintiff alleges that at the time, he was not acting aggressively, threatening anyone, or acting out in anger. But he also indicates that Walker's actions were the result of Plaintiff failing to 'lockdown' when told to do so"); *Harkless v. Yates*, No. 20-3313-SAC, 2021 WL 1140366, at *2 (D. Kan. Mar. 25, 2021) ("Plaintiff's conclusory allegations that defendant Yates kicked him and that this was cruel and unusual are insufficient" to state claims under Eighth or Fourteenth Amendments).

B.C. that was objectively unreasonable or more than *de minimus*. Accordingly, these Plaintiffs fail to state Fourteenth Amendment excessive force claims against any Moving Defendants and Counts 5 and 6 must be dismissed as to them.

The Complaint only alleges that "R.H. was physically restrained" by Moving Defendants Weiner, Martinez and Rochon on several occasions, Compl. ¶ 143, and that "T.F. was physically restrained" and "dragged across the floor" by Moving Defendant Piette with co-Defendant Bunnell, resulting in "friction burns." *Id.* ¶¶ 175-76. The Complaint also alleges that Moving Defendant Ruggles assisted co-Defendant Hattin and other Woodside staff in pinning B.C. to the floor and removing her clothing. *Id.* ¶ 186.[20]

However, first, the Complaint does not allege the facts or circumstances leading up to each restraint, such as actions or behaviors by R.H., T.F. or B.C. that may have led Woodside staff members to believe it necessary to restrain them for their own safety and the safety of others. Second, R.H., T.F. and B.C. allege very little about the degree, amount or specific type of physical force that was applied to them by each of the Moving Defendants during these restraint episodes. Third, the Complaint does not adequately allege the nature, severity or permanence of any physical pain or injury that R.H., T.F. or B.C. may have experienced as a result of these restraint episodes. Finally, fourth, R.H., T.F. and B.C. do not allege any facts at all about the knowledge or purpose of any of the Moving Defendants in supposedly participating in

[20] The Complaint further alleges that Moving "Defendant Ruggles told B.C. that if she surrendered her clothes, she would be provided a safety smock." Compl. ¶ 187. However, this alleged *quid pro quo* does not violate the Fourteenth Amendment since "verbal harassment and name calling, absent physical injury, are not constitutional violations cognizable under § 1983." *Borges v. Schenectady Cnty.*, No. 920CV245LEKDJS, 2020 WL 5369808, at *5 (N.D.N.Y. Sept. 8, 2020).

these restraint episodes. As a result, Plaintiffs R.H., T.F. and B.C. have failed to plead plausible Fourteenth Amendment excessive force claims against any of the Moving Defendants.

VI. The Court Should Not Retain Jurisdiction Over Plaintiffs' Supplemental State Law Claims (Counts 10-12) in the Absence of a Viable Federal Claim Against Moving Defendants

Under 28 U.S.C. § 1367(c)(3), district courts "may decline to exercise supplemental jurisdiction over a claim under [§ 1367(a)] if the district court has dismissed all claims over which it has original jurisdiction." "[I]n the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine -- judicial economy, convenience, fairness, and comity -- will point toward declining to exercise jurisdiction over the remaining state-law claims." *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988).

As discussed above, all of the claims asserted against the Moving Defendants arising under federal law, 42 U.S.C. §§ 1983, 1985 (Count 1-6 and 8-9) should be dismissed at the pleadings stage, prior to any discovery, pursuant to Rules 8(a)(2) and 12(b)(6). There is no compelling reason related to judicial economy, convenience, fairness, or comity for the Court to depart from the usual practice and retain supplemental jurisdiction over Plaintiffs' state law claims. Counts 10-12 should therefore also be dismissed as to Moving Defendants.

CONCLUSION

For the foregoing reasons, Defendants Nicholas Weiner, David Martinez, Carol Ruggles, Tim Piette and Devin Rochon respectfully request that the Court grant their Motion to Dismiss and dismiss Plaintiffs' Complaint as to them in its entirety.

Dated at Burlington, Vermont this 25th day of April 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_*

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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. 5:21-cv-283
v.	)	
KENNETH SCHATZ, et al.	)	

UNOPPOSED MOTION FOR EXTENSION OF TIME TO RESPOND TO DEFENDANTS' MOTIONS TO DISMISS

NOW COME, Plaintiffs in the above captioned matter, by and through undersigned counsel, and hereby move the Honorable Court to extend the time for Plaintiffs to respond to Defendants' Motions To Dismiss filed on April 25, 2022 from May 25, 2022 to July 15, 2022.

In support of this motion, Plaintiffs state that Defendants, through their respective counsel, filed a total of ten (10) motions to dismiss (Docs. 49, 50, 51, 52, 53, 54, 55, 56, 57, 58) on April 25, 2022. Counsel for Plaintiffs will need additional time to review all ten motions and respond accordingly.

Counsel of record for all Defendants have indicated that they have no objection to Plaintiffs' requested extension of time.

WHEREFORE, based on the above, Plaintiffs request an extension of the deadline to respond to Defendants' motions to dismiss to July 15, 2022.

DATED at Burlington, Vermont this 29th day of April, 2022.

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

/s/Brooks G.McArthur
Brooks G. McArthur, Esq.
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District of Vermont

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Case Name: Welch et al v. Schatz et al
Case Number: 5:21-cv-00283-gwc
Filer:
Document Number: 60(No document attached)

Docket Text:
ORDER granting [59] MOTION for Extension of Time to File Response/Reply as to [52] MOTION to Dismiss for Failure to State a Claim, [51] MOTION to Dismiss for Failure to State a Claim, [54] MOTION to Dismiss for Failure to State a Claim, [56] MOTION to Dismiss for Failure to State a Claim, [53] MOTION to Dismiss for Failure to State a Claim, [49] MOTION to Dismiss, [55] MOTION to Dismiss for Failure to State a Claim, [50] MOTION to Dismiss, [58] MOTION to Dismiss [1] Complaint, for Failure to State a Claim, and [57] MOTION to Dismiss. Time extended to July 15, 2022. Signed by Chief Judge Geoffrey W. Crawford on 4/29/2022. (This is a text-only Order.) (jal)

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

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District of Vermont

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Case Number: 5:21-cv-00283-gwc
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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. 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.

STIPULATED MOTION TO AMEND COMPLAINT, TO SUSPEND THE CURRENT DEADLINE FOR PLAINTIFFS' RESPONSES TO THE PENDING MOTIONS TO DISMISS, AND TO SET NEW DEADLINES FOR THE FILING OF PLEADINGS RESPONSIVE TO THE PROPOSED AMENDED COMPLAINT

Plaintiffs, by and through their undersigned counsel, hereby move this Court pursuant to Fed.R.Civ.Pro. 15(a) to grant them leave to amend their Complaint. The purpose of this motion and the proposed amended complaint is to resolve several of the issues raised by the Defendants in their Motions to Dismiss the Complaint filed on April 25, 2022. Docs. 49, 50, 51, 52, 53, 54, 55, 56, 57, and 58. Pursuant to Local Rule 15(a), a red-lined copy of the proposed amended complaint has been filed with this motion to amend.

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The parties would also ask the Court to set a new deadline for the filing of Defendants' pleadings responsive to the proposed amended complaint, i.e., six weeks from the time the Court has issued an order on this motion, and suspend the current filing deadline for Plaintiffs' response to Defendants' Motions to Dismiss until a new date has been established once the Defendants have had an opportunity to file pleadings responsive to the proposed amended complaint. Plaintiffs agree that the Defendants may raise any additional issues that were not advanced in their Motions to Dismiss in their responses to the proposed Amended Complaint.

Once Defendants have filed their responses to the proposed Amended Complaint, Plaintiffs will ask the Court to set a new filing deadline for Plaintiffs' responses to any unresolved issues raised in Defendants' Motions to Dismiss and Defendants' subsequent pleadings.

MEMORANDUM OF LAW

Rule 15(a)(2) provides that, once the time limits in subsection (a)(1) have expired, "a party may amend its pleadings only with the opposing party's written consent or with the court's leave. The court should freely give leave when justice so requires." The Second Circuit, citing Supreme Court precedent, has observed that "it is rare that such leave should be denied, especially when there is no prior amendment." *Ricciuti v. N.Y.C. Transit Authority*, 941 F.2d 119, 123 (2d Cir. 1991).

Pursuant to Local Rule 7(a)(7), Plaintiffs' attorneys have consulted with defense counsel and this Motion has incorporated suggested changes submitted by them. It is Plaintiffs' counsels' understanding that they do not object to this motion Plaintiffs' attorneys that they do not object to this Motion to Amend the Complaint, the proposed

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deadline for the filing of Defendants' responses to the proposed Amended Complaint (six weeks from the date of the Court's order on this motion), and the suspension of the Court's current filing deadline for Plaintiffs' responses to Defendants' Motions to Dismiss so that so that a new filing deadline may be established for Plaintiffs' comprehensive response to any and all unresolved issues raised by Defendants in their pending Motions to Dismiss and subsequent pleadings.

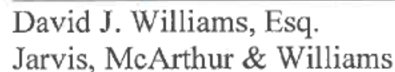
Local Rule 7(a)7) Certification

Plaintiffs' counsel certifies that they have conferred with defense counsel who informed Plaintiffs' counsel that they have no objection to this motion.

DATED at Burlington, Vermont this 23rd day of June 2022.

Respectfully submitted,

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



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UNITED STATES DISTRICT COURT
FOR THE
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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, Docket No. 5:21-cv-283

V.

KENNETH SCHATZ, KAREN SHEA,
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ERIN LONGCHAMP, CHRISTOPHER HAMLIN,
and ANTHONY BRICE, all in their individual capacities.

Defendants.

AMENDED 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 **an** 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 **and assistant director** at the Woodside Juvenile Rehabilitation Center, Essex, Vermont at all times relevant to this Complaint.

18. Defendant Bryan Scrubb was a staff member **and clinician** 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.

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

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 **as residential services manager** 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.

30. DCF is the Vermont state agency that is responsible for making sure children and youth are safe from abuse, have their basic needs met, and live in safe, supportive, and healthy environments.[1]

31. Because children detained at Woodside were in the custody of DCF, all of these defendants had a "special relationship" with G.W., R.H., T.W., B.C., T.F., A.L., and D.H.

32. Because of the defendants' "special relationship" with their wards held at Woodside, each of them had a constitutional duty enforceable through the Due Process Clause of the Fourteenth Amendment to the United States Constitution to protect G.W., R.H., T.W., B.C., T.F., A.L., and D.H. from harm, including physical abuse, excessive force, and solitary confinement in the North Unit.

33. Defendants Schatz, Shea, Wolcott, Gooley, Simons, Steward, Bunnell, Dubuc, Cathcart, Scrubb, Hatin, Weiner, Martinez, Ruggles, Piette, Rochon, Dale, D'Amico, Hamlin, and Brice either directly participated in the physical abuse of G.W., R.H., T.W., B.C., T.F., A.L., and D.H. and the use of solitary confinement, and/or failed to fulfill their constitutional obligation to protect

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[1] ***See* DCF.vermont.gov/protection/services.**

G.W., R.H., T.W., B.C., T.F., A.L., and D.H. from these abusive and reprehensible practices.

34. **In addition, because Defendants Schatz, Shea, Gooley, Wolcott, Dale, and Longchamp ignored repeated warnings about the unsafe conditions at the Natchez Trace Youth Academy and transferred R.H. and D.H. to that facility where they were subjected to unspeakable physical and mental abuse, those defendants failed to fulfill their constitutional obligation to protect R.H. and D.H. from the foreseeable mental and physical harm that befell them after those boys were dispatched to Natchez Trace.**

JURISDICTION AND VENUE

35. 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).

36. **The Court may exercise supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. §1367.**

37. 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

38. DCF's Woodside Juvenile Rehabilitation Center **was defined as follows: It** "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).

39. 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."

40. 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 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."

41. From the outside, Woodside resembled an adult prison and had three living units, **East, West, and North**. The main units, East and West, housed between 13 and 15 residents each. These units contained "dry rooms" or cells that lack plumbing.

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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.

42. 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."

43. 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.

44. 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.

45. 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~~ **whatever** staff members delivered to the isolation cells.

46. 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 a paper or pencil.

47. 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.

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

49. Under the direction of Defendant Simons, Woodside staff members, including Defendants **Cathcart, Hatin, Piette, Bunnell, Dubuc, Brice**, Weiner, Martinez, and Rochon, would apply rotational pressure to a juvenile's joints, including

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wrists, shoulders, and knees, and hyperextend shoulder and rotator cuff muscle groups.

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

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

52. 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."

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

54. On December 2, 2016, the attorney from the Office of the Juvenile Defender participated in a meeting to discuss the conditions of confinement in the North Unit with Defendants Simons and Shea.

55. Defendant Simons made an audio recording of that meeting and a transcript of the meeting has been prepared.

56. The meeting focused on the conditions of G.W.'s confinement in the North Unit (then known as the ICU), who was 13 years old at the time.

57. The attorney from the Office of the Juvenile Defender described in detail what was happening with her client, G.W., while G.W. was held in isolation.

58. The cell G.W. was held in was filthy, the toilet did not flush, and people entering the room had to mask the odor by using Vick's VapoRub.

59. G.W. had gained so much weight that the attorney noticed stretch marks on G.W.'s skin.

60. The attorney from the Office of the Juvenile Defender explained that such dramatic weight gain might have serious medical consequences, particularly since G.W. was prescribed anti-psychotic drugs.

61. G.W. had limited access to clothing and her hygiene was so poor that she smelled badly during a recent court appearance.

62. G.W. was not allowed to go outside to exercise, something that would have seriously impact a child who grew up in the country and was used to spending lots of time outdoors.

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63. In addition, G.W. was not being provided with appropriate educational services.

64. G.W.'s attorney was particularly concerned "about the psychological effect of not having any clothes and of being – being naked all the time in front of male staff."

65. G.W.'s attorney, who formally worked at DCF as a child abuse investigator, continued: "I think if we had a situation, again, to analogize to if this was apparent (sic) doing this to their child to control the child's mental health issues and this was not a facility doing this stuff, we would look at this as abuse. We would look at it in a very different way that we look at it here."

66. Defendant Shea agreed to look into the attorney's complaints and get back to her because "I know that there are other forums where this is being discussed."

67. In a letter dated December 2, 2016, Defendant Shea dismissed these complaints and suggested that G.W. needed to be held in solitary confinement for her own good.

68. Since this letter is dated the same day as G.W.'s attorney registered her complaints about G.W.'s conditions of confinement at Woodside, it is highly unlikely that Defendant Shea conducted an investigation into the specific allegations of potential child abuse brought to her attention earlier in the day.

69. When the Office of the Juvenile Defender registered complaints about the conditions of confinement at Woodside, Woodside officials, **including Defendants Simons, Steward, and Bunnell,** 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~~ **R.H.** and **T.F.** to sign notes to ~~his~~ **their** attorneys indicating that they should withdraw ~~a motion~~ **motions** for a protective ~~order~~ **orders** filed in the Vermont Superior Court, Family Division.

70. No later than August 2018, DCF management officials, including Defendants Schatz, Shea, **D'Amico,** 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.[2]

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[2] In July 2018, R.H. asked the Vermont Superior Court to order Defendant Schatz to stop using painful restraints and isolation. G.W.'s attorney told Defendant Shea about the intolerable conditions in the North Unit in December 2016. In August 2018, Defendant D'Amico witnessed B.C. pant-less in her North Unit cell. In December 2017, Defendant Gooley received a copy of Defendant Simons' denial of A.L.'s grievance that he had been subjected to solitary confinement in the North Unit.

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71. 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.

72. 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.**, who was a Woodside detainee.**

73. 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 …"

74. ~~In~~ On July **6,** 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.

75. 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…"

76. The complaint alleged that on April 17, 2018, Defendants Simons, Cathcart, and Martinez entered R.H.'s North Unit cell and proceeded to restrain him and strip the room of all of his belongings, including his bedding.

77. On April 18, 2018, Defendants Dubuc, Martinez, Rochon, and Weiner entered R.H.'s North Unit cell and proceeded to restrain him by pinning him face-down on his bed, and used a cutting tool to cut his shirt off of his body.

78. On May 4, 2018, Defendant Steward stood over R.H. as several large male Woodside staff members pinned R.H. to the ground and warned R.H. that they would take his cloths away if he could not be "safe" with them.

79. The Complaint indicates that there is a video recording of this incident.

80. During the May 4, 2018 restraint, Defendant Weiner "dug his finger into the pressure point on [R.H.'s] jaw and applied pressure to [his] neck to cause him pain."

81. Although they were mandated by state law to report Defendant Weiner's abusive conduct, Defendant Steward and others did not report what they had just witnessed to the appropriate authorities.

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82. Finally, the complaint alleged that R.H. had been subjected to extended periods of solitary confinement in the North Unit and that on July 3, 2018, he was not allowed to speak with his attorney or meet with an expert hired by The Office of the Juvenile Defender "to evaluate the impact of Woodside's excessive use of restraint and seclusion with [R.H.]."

83. On July 18, 2018, an attorney with the Office of the Juvenile Defender filed a Second Motion for an Emergency Protective Order on behalf of R.H. in the Vermont Superior Court, Franklin Family Division.

84. The second motion asked the court to issue an order requiring Defendant Schatz "and his agents to stop subjecting him 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 and stop subjecting him to forcible removal of his clothing during restraint."

85. The second motion alleged that since the first motion was filed, R.H. had, with a few exceptions, not been permitted to leave the North Unit and that he was "depressed as f---, because I'm in a f---ing box."

86. R.H. also alleged that Defendant Steward was trying to talk to him about his July 6, 2018 motion, telling him that "he was not going to get out of Woodside because he is 'already in the long-term program.'"

87. On August 22, 2018, the Office of the Juvenile Defender filed a Motion for an Emergency Protective Order in the Vermont Superior Court, Orleans Family Division, on behalf of B.C., who was a Woodside detainee.

88. The motion indicated that B.C. "has been restricted to the North Unit, deprived of clothing, and permitted extremely limited access to possessions and stimulating activities for four weeks as of this filing … She is forced to shower naked in front of staff, cannot wear clothing, and cannot have books, paper, or writing implements."

89. The motion was accompanied from a licensed psychologist's affidavit stating that "[m]aintaining [B.C.] in deprived conditions and not providing her with appropriate treatment with accommodations is detrimental to [her] ability to heal."

90. On April 4, 2019, the Office of the Juvenile Defender filed a Complaint for Emergency Injunctive Relief on behalf of Juvenile #1, N.B., who was a Woodside detainee, against Defendant Schatz.[3]

[3] N.B. is not a party to this action.

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91. **The Complaint asked the court to issue an order requiring Woodside to "immediately stop using the purposeful infliction of pain during restraints to achieve compliance and immediately stop using prone positions."**

92. **The Complaint alleged that N.B. had been subjected to "pain compliance" techniques "on his legs, arms, shoulders, and wrists that caused significant pain and swelling of his joints due to hyperextension."**

93. **On March 23, 2019, Juvenile #1 was locked in his cell in the North Unit and subsequently subjected to a video-recorded physical restraint involving several Woodside staff members.**

94. **The video shows the staff members forcing Juvenile #1 onto the floor of a "soothing room," holding him in a prone position with his arms raised "straight up in the air … the staff members appear to be twisting [Juvenile #1's] arms, particularly his right arm.**

95. **While this is happening, another staff member is "holding Juvenile #1's legs, crossed at the ankles, bent at the knees, and is forcefully pushing his feet into his buttocks."**

96. **During this restraint, which was ordered by Defendant Steward, "Juvenile #1 is struggling and repeatedly telling staff they were hurting him."**

97. **An affidavit executed by Paul Capcara, R.N. accompanied the Complaint and indicated that "the order to physically restrain Juvenile #1 was unjustified and an inappropriate response to suicidal ideation."**

98. **Relying on investigatory reports submitted to Defendant Schatz in October 2018 by DCF's Residential Licensing & Special Investigations Unit (RLSIU), the Complaint alleged that four other Woodside detainees had been subjected to the same painful techniques that RLSIU concluded had violated a regulation prohibiting "cruel, severe, unusual or unnecessary practices."**

99. **The four other detainees whose abuse was investigated by RLSIU are Plaintiffs R.H., T.W., B.C., and T.F.**

100. ~~In June 2019,~~ **On June 20, 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.

101. 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.

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102. 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…"

103. 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.

104. 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."

105. On June 24, 2019, the Vermont Superior Court held a hearing on G.W.'s motion and heard the testimony of Dr. Christopher Bellonci.

106. Dr. Bellonci testified that "Woodside had placed [G.W.] at risk of physical and psychological harm by repeatedly restraining her on the floor and stripping her naked, subjecting her to dangerous and painful restraint techniques, and involuntarily escorting her down a flight of stairs. Dr. Bellonci explained that the involuntary removal of clothing and forced nudity are particularly damaging to someone [like G.W.] who has been a victim of sexual assault."

107. Following this hearing, on June 28, 2019[4], the Office of the Juvenile Defender filed a Verified Motion for an Ex Parte Protective Order in the

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[4] **Earlier that day, at 6:58 a.m., Defendants Dubuc and Martinez, along with two unidentified men dress in Tyvex suits, entered G.W.'s cell as she was lying naked on the floor. *See Paragraphs 384-388 below.***

Defendant Dubuc is wearing a blue shirt and shorts. Defendant Martinez is seen standing next to Dubuc. The two men in the Tyvex suits then drag G.W., who is face down, along the cell floor.

As G.W. screams, the two men in the Tyvex suits pull G.W.'s arms behind her back, while Defendant Dubuc stands over her naked body. The men are then seen retreating from the cell, leaving a still-screaming G.W. lying naked and alone on the floor as they close the feces-smeared cell door behind them.

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Vermont Superior Court, Chittenden Family Division, asking the court to issue an order "restraining the Commissioner of the Department for Children and Families and his agents continuing to confine [G.W.] at Woodside and order the Commissioner and his agents to transfer [G.W.] to a hospital immediately."

108. The motion indicated that on June 26, 2019, G.W.'s safety smock, along with her blanket, were forcibly removed by Woodside staff members and that Defendants Simons and Cathcart "grappled with [G.W.] while she was naked and forced her back into her room." Shortly thereafter, Simons and Cathcart put their hands on G.W., who was naked, and " 'escorted' her involuntarily to her room."

109. The following day, G.W. was "supposed to have a telephone interview with Dr. Bellonci," but someone at Woodside canceled the phone interview without prior notice.

110. It was only after G.W.'s attorneys "reached out" to DCF's attorneys that G.W. was able to speak with Dr. Bellonci.

111. During this call, G.W. revealed to Dr. Bellonci that a Woodside staff member "had been making sexual comments while watching her urinate" and that the staff member asked her "to do 'sexual things.'"

112. After this call was completed, Woodside staff members removed her safety blanket, "leaving her naked."

113. On June 27, 2019, four male Woodside staff members, including Defendant Simons, "restrained her while she was naked" after forcibly entering her cell.

114. Emails from Defendants Dubuc, Bunnell, and Cathcart to Defendant Dale confirmed that they were involved in the incidents on June 24, 2019 and June 26, 2019 alleged in G.W.'s June 28, 2019 motion.

115. In addition to the actions filed in Vermont state courts, a series of grievances were filed objecting to the conditions of confinement at Woodside.

116. On December 29, 2017, an attorney with the Office of the Juvenile Defender filed a grievance on behalf of A.L.

117. The grievance requested a prompt review of A.L.'s placement in solitary confinement in the North Unit and immediate release from the North Unit.

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118. In a memo dated December 29, 2017, Defendant Simons denied the grievance. Copies of Simons' memo were sent to Defendants Shea and Gooley.

119. On January 2, 2018, an attorney with the Office of the Juvenile Defender filed another grievance on behalf of A.L.

120. The grievance complained about the use of so-called "resets" that required an offending detainee to be secluded in a locked room, and requested a cessation of the use of these "resets."

121. On December 17, 2017, an attorney with the Office of the Juvenile Defender filed a grievance on behalf of D.H.

122. The grievance alleged improper placement of D.H. into solitary confinement in the North Unit and that Defendants Simons and Cathcart had provided contradictory reasons for sending D.H. into the North Unit.

123. In addition, the grievance indicates that the attorney from the Office of the Juvenile Defender asked Defendant Steward to reconsider her order sending D.H. into solitary confinement because "it was not in line with applicable policy" and that Steward denied the request.

124. The grievance requested a prompt review of Defendants Simons' and Steward's decision to send D.H. into solitary confinement in the North Unit and immediate release from the North Unit.

125. In a memo dated December 18, 2017, Defendant Simons denied the grievance.

126. On August 14, 2017, an attorney with the Office of the Juvenile Defender filed a grievance with Defendant Simons on behalf of B.C.

127. B.C.'s grievance complained that B.C. suffered a sprained ankle while being restrained by two male Woodside staff members on July 29, 2017.

128. On August 17, 2017, an attorney with the Office of the Juvenile Defender filed a second grievance with Defendant Gooley on behalf of Plaintiff B.C.

129. The grievance indicated that because Defendant Simons improperly restrained on August 13, 2017, the attorney asked Defendant Gooley to review both the original grievance related to the July 29, 2017 restraint and the second restraint involving Defendant Simons.

130. On May 5, 2018, an attorney with the Office of the Juvenile defender filed a grievance on behalf of R.H.

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131. The grievance complained about R.H.'s confinement in the North Unit and Defendant Weiner's unlawful conduct during the May 4, 2018 restraint as detailed in the Complaint subsequently filed by the Office of the Juvenile Defender on July 6, 2018.

132. R.H.'s grievance requested that Woodside immediately release him from the North Unit, refrain from "forced stripping" or "otherwise using the cutting tool to remove his clothing that he is wearing," and preserve video recordings of the April 18, 2018 incident.

133. Defendant Simons subsequently denied R.H.'s grievance.

134. On May 9, 2018, an attorney with the Office of the Juvenile defender filed an amended grievance and appeal on behalf of R.H.

135. R.H.'s amended grievance requested his immediate release from the North Unit, the cessation of painful physical restraints, preservation of video recordings of restraints used on R.H., and "appropriate training and ongoing supervision to the involved staff members, particularly where repeated grievances from multiple sources have identified a pattern of concern with a staff member's conduct toward residents."

136. R.H.'s amended grievance complained about an unnecessary and inappropriate restraint on May 4, 2018 during which Defendant Weiner applied pressure to R.H.'s neck and dug his finger into a "pressure point" causing R.H. to "experience significant pain."

137. After the incident, R.H.'s attorney met privately with him and observed that there were no personal possessions in R.H.'s cell and that his "toilet was also clogged and was nearly overflowing with dirty brown water."

138. The amended grievance indicated that R.H's conditions of confinement were "unsuitable for an animal" and that "[p]erhaps DCF can agree that there is no justification sufficient to permit keeping a child in conditions that - if inflicted upon an animal – would constitute 'cruelty' (i.e., depriving a youth of water, confining him half-naked to a cold dark cell for four continuous days, forcing him to live with raw sewage rendering his toilet unusable for half a day, or denying him a shower and forcing him to sit with feces on his person and in his living space)."

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

140. On October 23, 2018, DCF held a Woodside Stakeholder Meeting. Defendant Schatz attended the meeting. The following day, the Juvenile

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Defender sent Defendant Schatz a follow-up email detailing the deplorable conditions of confinement.

141. 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."

142. 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.

143. RLSIU investigated R.H.'s conditions of confinement at Woodside, the use of painful physical restraints, and Defendant Steward's interference with his right to counsel.

144. 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.

~~145. 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."~~

145. 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.

146. 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.

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147. 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."

148. 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~~ **B.C.** while placing her in the North Unit.

149. 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.

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

151. 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."

152. 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.

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

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154. 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."

155. On July 5, 2018, an attorney with the Office of the Juvenile Defender filed a complaint in the Vermont Superior Court alleging that Defendants Bunnell and Piette improperly restrained and injured T.F.

156. Subsequently, RLSIU investigated an incident that occurred on June 27, 2018 during which Defendants Piette and Bunnell again restrained T.F. and injured her.

157. In particular, based on this investigation, RLSIU concluded that Defendant Bunnell's conduct violated Regulation 201 (A Residential Treatment Program shall insure children/youth the following rights: To be free from harm by caregivers or others, and from unnecessary or excessive use of restraint and seclusion/isolation); Regulation 648 (prohibition of pain inducement techniques and hyperextension of joints); and, Regulation 651 (restraint shall only be used as last resort).

158. The report indicated that the restraint employed by Defendants Bunnell and Piette "is dangerous and out of control. Staff are seen kneeling on [T.F.'s] back, the position of her arms and wrists, twisted and lifted behind her back appear inconsistent between the staff person on her left vs. her right side. Finally, dragging her by her feet, causing injury (multiple rug burns) is not in accordance with Woodside's restraint training)."

159. Despite ~~these orders~~ **RLSIU's multiple findings that Woodside was mistreating children detained at that facility**, 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.

160. 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.

161. 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."

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- "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."

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

163. 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).

164. 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.

165. Nothing demonstrates Defendant 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.

166. "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 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.

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167. 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 menstural blood, and was nearing hypothermia.

CONDITIONS OF CONFINEMENT
NATCHEZ TRACE JUVENILE ACADEMY

168. 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.

169. 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.

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

171. 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 **that** D.H. was repeatedly threatened with physical harm.

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

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

174. 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.

175. 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."

176. On 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

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D'Amico.

177. 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.

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

179. On June 12, 2018, an attorney from the Office of the Juvenile Defender met with Defendants Gooley, and D'Amico, along with others, to discuss the out-of-state placement of children in DCF custody.

180. During the meeting, the practices of a for-profit company called Universal Health Services (UHS) were discussed.

181. UHS owned and operated Natchez Trace Youth Academy.

182. Defendants Gooley and D'Amico were informed that children sent to a UHS facility were expressing their concerns to their attorney at the Office of the Juvenile Defender about the "quality of care" they were receiving at that facility.

183. According to the attorney from the Office of the Juvenile Defender, out-of-state programs were blocking access to her clients sent to these facilities.

184. Defendants Gooley and D'Amico were informed that "[i]f the concern comes from the youth, there is a tendency to dismiss the credibility of the youth. There is concern that DCF is not the appropriate entity to address concerns as DCF is biased given the need for placement."

185. DCF officials, including Defendants Schatz, Wolcott, **Dale, Longchamp, Gooley, Harriman,** 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

186. 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),

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and in opinions by Justices Kennedy, Sotomayor, and Brennan in the United States Supreme Court.

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

188. 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.

189. 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.

190. Brain research, both human and animal studies, has amassed a clear picture of this process[5] and there is clear evidence that this process of brain development can be derailed by stress.

191. The effects of stress on adolescent brain development has been described in detail,[6] 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.[7]

192. There has also been a large body of research using animal models,[8] demonstrating long-term consequences of chronic unpredictable stress.

193. The research has demonstrated that the brain's reaction to stress, the surge of cortisol (the stress hormone) modulated through the brain's hypothalamic-

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[5] *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.

[6] *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.

[7] 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

[8] 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.

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pituitary-axis, is massively affected in adolescents who have experienced chronic stress.

194. Research further demonstrates that acute stress impairs the juvenile's ability to maintain goal-directed, as opposed to emotion-driven, behavior.[9] 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.[10] These consequences – including actual morphological changes in brain structure – have been demonstrated to persist into adulthood.[11]

195. 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.

196. 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."[12] 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.

197. Dr. Grassian's report has been provided to Defendants.

SOLITARY CONFINEMENT IN THE NORTH UNIT

198. Woodside managers had to approve the transfer of children detained at Woodside from the East and West Units to the North Unit.

[9] *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.
[10] 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
[11] *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). *Stress and the adolescent brain; Amygdala-prefrontal cortex circuitry and ventral striatum as developmental targets.* Neuroscience and Behavioral Reviews, 70, 217-227.
[12] 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.

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199. This usually meant that either Defendant Simons or Defendant Steward had to approve any transfer to the North Unit.

200. In at least one instance, Defendant Cathcart, in his capacity as acting Director at Woodside approved the transfer of B.C. to the North Unit.

201. Before becoming Director of Woodside, Defendant Simons had worked at the Ethan Allen furniture factory, served in the U.S. military, and worked for the Vermont Department of Corrections.

202. Thus, Defendant Simons appears to have had no professional training and experience caring for juvenile detainees who suffered from serious mental illness or the effects of childhood trauma resulting from emotional, physical, and/or sexual abuse.

203. It is unclear whether Defendant Simons was aware of research on adolescent development that makes clear why juvenile solitary confinement is uniquely harmful.

204. Likewise, before becoming Woodside's clinical director, Defendant Steward appears to have had no professional training or experience caring for juvenile detainees who suffered from serious mental illness of the effects of childhood trauma.

205. According to her resume, Defendant Steward had earned a doctoral degree in counseling psychology from SUNY Buffalo.

206. Defendant Steward's dissertation is entitled "Art Therapy Intervention with 'At-Risk' Adolescent Boys: Effects on self-image and Perceptions of Loss."

207. According to the dissertation, Defendant Steward's research subjects were former public school students who lived at home while attending an alternative school in a major metropolis in the Northeast.

208. The research subjects "arrived at the alternative school at varying times depending on what school district they were coming from, what mode of transportation they were taking, and sometimes their mood."

209. The data collected during Defendant Steward's experiment in art therapy was apparently inconclusive and she was unable to prove her original thesis.

210. The dissertation ends with this observation: "This writer is left missing the participants, hoping for them, and committing to the challenge of trying to make art therapy a part of more children's lives.

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211. It is unclear whether Defendant Steward was aware of research on adolescent development that makes clear why juvenile solitary confinement is uniquely harmful.

212. Anytime a detainee was transferred to solitary confinement in the North Unit and stayed for at least seven days, DCF's deputy commissioner was required to review the placement and approve any further detention in solitary confinement.

213. In March 2018, Defendant Shea reviewed the placement of B.C. in the North Unit and approved B.C.'s further detention in solitary confinement.

214. On another occasion, in March 2018, Defendant Shea reviewed the placement of T.W. in the North Unit and approved T.W.'s further detention in solitary confinement.

215. At this point, it is unclear how many other children Defendant Shea committed to the North Unit for more than seven days.

216. Nor is it clear whether Defendant Shea had any specialized training and experience before she started committing children to further detention in solitary confinement.

217. It is unclear whether Defendant Shea was aware of research on adolescent development that makes clear why juvenile solitary confinement is uniquely harmful.

218. It is unclear whether Defendant Cathcart had any specialized training and experience before he started committing children to detention in solitary confinement in Woodside's North Unit.

219. It is unclear whether Defendant Cathcart was aware of research on adolescent development that makes clear why juvenile solitary confinement is uniquely harmful.

220. In October 2018, an attorney from the Office of the Juvenile Defender attended a Woodside Stakeholder meeting with Defendant Steward. Defendant Steward asked the attorney to provide a detailed description of what needed to be changed at Woodside.

221. In an email dated October 24, 2018, the attorney from the Office of the Juvenile Defender informed Defendant Schatz that she had witnessed the conduct of Woodside staff members that "if perpetrated by a parent, would have likely resulted in substantiation, removal, 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

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accountability for staff who hurt residents and perpetrate a culture of silence in the face of resident maltreatment is deeply troubling."

222. The attorney from the Office of the Juvenile Defender told Defendant Schatz that Woodside should (1) "begin utilizing a nationally-recognized de-escalation and restraint-training protocol immediately"; (2) revise its use-of-force policy immediately; and, (3) close the North Unit.

223. Defendant Schatz ignored all of these proposals.

224. While he was ignoring these proposals, it is unclear whether Defendant Schatz was aware of research on adolescent development that makes clear why juvenile solitary confinement is uniquely harmful while he was overseeing the operation of the North Unit at Woodside as DCF commissioner, or took the time to find out more about this subject after problems in the North Unit were first brought to his attention.

225. 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

226. 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.

227. 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.

228. 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

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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.

229. 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.

230. 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.

231. 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.

232. 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.

233. 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 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.

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234. 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.

235. 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.

236. After 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.

237. **After DCF transferred D.H. to Natchez Trace Youth Academy**, 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."

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

239. 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."

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

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

242. 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.

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

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244. 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.

245. 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.

246. On December 17, 2017, an attorney with the Office of the Juvenile Defender filed a grievance on behalf of D.H.

247. The grievance alleged improper placement of D.H. into solitary confinement in the North Unit.

248. In addition, the grievance indicates that the attorney from the Office of the Juvenile Defender asked Defendant Steward to reconsider her order sending D.H. into solitary confinement because "it was not in line with applicable policy" and that Steward denied the request.

249. The grievance requested a prompt review of Defendant Simons' and Steward's decision to send D.H. into solitary confinement in the North Unit and immediate release from the North Unit.

250. In a memo dated December 18, 2017, Defendant Simons denied the grievance.

251. In December 2017, while **D.H. engaged** ~~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.

252. 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.

253. When asked about the decision to send D.H. into solitary confinement, Defendants Simons, Cathcart, 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 if harm to self or others could be placed in a North Unit isolation cell.

254. At this point, it is impossible to catalogue every instance of the abuse D.H. at Woodside and identify which of the defendants named in this Amended Complaint participated in that abuse because Plaintiff's counsel

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has yet to receive a copy of D.H.'s DCF file and the video recordings of Woodside staff interactions with him.

FACTUAL BACKGROUND
R.H.

255. 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.

256. 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.

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

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

259. 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.

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

261. 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."

262. On April ~~17~~ **18**, 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.

263. Following the **April 18, 2018** 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.

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

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

266. 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.

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

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

269. 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.

270. On July 6, 2018, an attorney for R.H. filed a Motion for an Emergency Protective Order in the Vermont Family Court alleging that Woodside staff improperly restrained him and transferred him to solitary confinement in the North Unit.

271. According to the motion, on April 17, 2018, while he was secluded in the North Unit, Defendants Simons, Cathcart, and Martinez entered R.H.'s cell, restrained him on the bed, and stripped the cell of all of R.H.'s belongings, including his bedding.

272. The following day, Defendants Dubuc, Martinez, Rochon, and Weiner entered R.H.'s seclusion cell, restrained him, pinned him face-down on his bed, and used a cutting tool to remove R.H.'s shirt.

273. On May 4, 2018, several male staff members surrounded R.H. and restrained him and then escorted his to a seclusion cell in the North Unit. While R.H. was pinned to the ground, Defendant Steward told R.H. that staff would take away his clothes again if he could not be safe with them.

274. During the May 4, 2018 restraint, R.H. alleged that Defendant Weiner "intentionally dug his finger into a pressure point on [R.H.'s] jaw and applied pressure to [R.H's] neck in order to cause him pain. The video shows [R.H.] yelling that Mr. Weiner is 'choking' him, but Mr. Weiner's hands are hidden from view of the camera."

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275. According to the motion, between June 17, 2018 until July 5, 2018, R.H. was secluded in a North Unit cell almost continuously.

276. On July 18, 2018, R.H.'s attorney filed a Second Motion for a Protective Order.

277. This motion indicated that R.H.'s attorney had tried to resolve issues related to her client's mistreatment at Woodside, to no avail.

278. R.H.'s attorney informed Defendants Simons and Gooley that Woodside staff members had forcibly removed R.H.'s clothing, deliberately injured him, and had unlawfully secluded him.

279. In response to these complaints, Defendants Simons justified this conduct, claiming that R.H. had consented "to having his shirt cut off while being pinned face-down down on a hard [floor] by [Defendant Dubuc and others] who were literally twisting both of his arms at the time per [R.H.'s] report and video evidence."

280. It is unclear whether Defendant Simons or Defendant Gooley ever responded to R.H.'s grievances.

281. Counsel then asked Defendants Simons and Cathcart to "pair" R.H. with staff members who were less violent. That request was ignored by Defendants Simons and Cathcart. Instead, R.H. continued to be paired with Defendant Weiner, who had assaulted him earlier in the month.

282. By refusing to help R.H., Defendants Simons and Cathcart violated their constitutional duty to protect R.H. from harm.

283. On June 29, 2018, R.H. met with counsel and requested a book to help him pass time while he was held in solitary confinement.

284. Counsel met with Defendant Steward and conveyed R.H.'s request. Overhearing this conversation, Defendant Bunnell stated R.H. might get the book he requested "if and when it was determined to be clinically indicated."

285. On July 3, 2018, Defendant Steward refused to allow R.H.'s expert witness, Paul Capcara, R.N., to meet with R.H.. Defendant Steward also refused to allow counsel to meet with her client.

286. That day, R.H. told Defendant Steward that he wanted to speak with his lawyer.

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287. On July 13, 2018, Defendant Steward met R.H. in the North Unit and tried to ask him questions about the complaint his attorney filed in the Vermont Superior Court on July 6, 2018.

288. During this meeting, Defendant Steward informed R.H. that he had no chance of winning or getting moved to a different placement because he was already in a "long-term" program at Woodside.

289. R.H. believed that Defendant Steward was pressuring him to tell his attorney to dismiss the Complaint, and that if he did, he would get more privileges.

290. On July 20, 2018, R.H. was scheduled to meet with two investigators about an assault on another Woodside detainee that R.H. had witnessed.

291. After R.H. refused to meet with the investigators, Defendant Steward praised R.H. for making a "good choice."

292. On August 3, 2018, R.H. met with an investigator but refused to talk. R.H. told the investigator that he was afraid that if he talked, Defendant Steward would retaliate against him.

293. In late July or early August 2018, Defendant Steward told R.H. not to authorize his lawyer to receive copies of R.H.'s clinical notes at Woodside.

294. In a second meeting, Defendant Steward promised to give R.H. "blue status," i.e., additional privileges, if he did not authorize the release of his clinical records to his attorney.

295. At the time, the discovery of these records was an issue in R.H.'s Vermont Superior Court case, with the Vermont Attorney General's Office informing R.H.'s attorney that DCF "opposes the release of clinical records."

296. Throughout August and September 2018, Defendants Simons and Steward pressured R.H. to dismiss his Vermont Superior Court case.

297. In September 2018, they urged R.H. to write a letter to his attorney and tell her he wanted the case dismissed.

298. Succumbing to this pressure, and believing he had no chance of prevailing, R.H. wrote the letter and his case was dismissed.

299. During the four-month period between mid-March 2018 and mid-July 2018, R.H. spent 67 days in solitary confinement in the North Unit and was subjected to an excessive number of involuntary interventions, including 47 instances of seclusion and 6 instances of restraint.

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300. **A number of these incidents was investigated by the Office of Residential Licensing and Special Investigations (RLSI).**

301. **The RLSI investigators interviewed witnesses and reviewed video recording of the incident.**

302. **The RLSI investigative report indicates that Defendants Dubuc, Martinez, and Weiner restrained R.H.. According to the report, R.H. indicated that Defendant Weiner grabbed R.H. by the neck and that R.H. was unable to breath.**

303. **The RLSI report indicates that on one occasion, Defendants Martinez, Dubuc, and Weiner, all dressed in riot gear, went into R.H.'s room and pinned his face to the floor, with his arms extended backwards.**

304. **At one point during the investigation, RLSI investigators told Defendant Simon that the routine use of the North Unit to isolate Woodside detainees violated RTP regulations. Defendant Simons responded "We violate that."**

305. **The investigators also reported that R.H. alleged that Defendant Steward interfered with his right to meet with his lawyer and the investigators believed that R.H. demonstrated real fear of retaliation for naming concerned staff members or addressing the restraints as using pain compliance."**

306. **Based on their investigation into R.H.'s complaints, RLSI investigators concluded that Woodside 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 resort); 654 (restraint shall never be used for coercion, retaliation, humiliation, as a threat of punishment or form of discipline, in lieu of adequate staffing, for staff convenience, or for property damage not involving imminent danger); 660 (children in seclusion must be provided with uninterrupted supervision by qualified staff); 701 (A RTP shall be equipped to provide physical comfort of all children); and, 718 (No youth's bedroom shall be stripped of its contents and used for seclusion).**

307. 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 **after credible complaints about the treatment of children held at that facility had been made to Defendants Schatz, Shea, Gooley, Wolcott, Dale, and Longchamp.**

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

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

310. At this point, it is impossible to catalogue every instance of the abuse R.H. at Woodside and identify which of the defendants named in this Amended Complaint participated in that abuse because Plaintiff's counsel has yet to receive a copy of R.H.'s DCF file and the video recordings of Woodside staff interactions with him.

FACTUAL BACKGROUND
T.W.

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

312. 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.

313. 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.

314. According to these incident reports, Defendants Simons and Steward issued these unlawful orders**, following requests from Defendants Cathcart Hamlin, Bunnell, Dubuc, and Scrubb.**

315. According to these incident reports, Defendants Bunnell, Cathcart, **Martinez, Weiner, Piette, Rochon, Hamlin, Ruggles, Hatin, Schrubb,** 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**, or witnessed this unlawful conduct without fulfilling their constitutional obligation to intervene or take other steps to protect T.W.**

316. 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.

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317. 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.

318. Specifically, RSLIU investigated the restraints employed on May 6, 2018, May 24, 2018, May 26, 2018, and June 11, 2018.

319. The Woodside Incident Report for the May 6, 2018 restraint has been provided to Defendants.

320. The Woodside Incident Report for the May 24, 2018 restraint has been provided to Defendants.

321. Photos of injuries suffered by T.W. while she was detained at Woodside have been provided to Defendants.

322. On June 11, 2018, a hearing was held in the Vermont Superior Court related to the Motion for a Protective Order filed by T.W.'s attorney on May 29, 2018.

323. During the hearing, T.W. testified that on May 24, 2018, Defendants Simons and Bunnell twisted her arms and that she heard a "pop in her arm when they were twisting it." T.W. rated the pain level related to the multiple arm twists as "8 out of 10" and "9 out of 10."

324. After T.W. returned to Woodside after the June 11, 2018 hearing, T.W. was subjected to another painful physical restraint during which she was taken down to the floor, with a staff member's knee in her back.

325. During the restraint, a video reveals that T.W. begins to scream "you're breaking my arm" as an unidentified staff member puts her arm in a "position [that] looks visibly painful."

326. The RLSIU investigator who viewed the video indicated that it was "extremely concerning … [T.W.] is clearly in pain throughout the restraint which leads this writer to believe the restraint techniques used at Woodside are utilizing pain compliance. Given that [T.W.] is on her stomach, at points with someone's knee in her back, there are serious safety risks for injury and difficulty breathing."

327. The RSLIU report concludes with this analysis: "The first major theme of the grievances pertains to the use of restraints and the modality used. The restraint modality is not evidence-based nor a nationally recognized modality. Given [T.W.'s] pain ratings, the video evidence, the testimony of Mr. Capcara and [T.W.] herself, this restraint modality uses pain compliance. The hyperextension of joints, the crossing of the legs, the

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prone position, are all indicative of a law enforcement restraint model. The restraint documentation also demonstrates that Woodside is not using restraint only as a last resort. Many times, [T.W.'s] state of refusal or the disruption of other residents were reasons for the restraint. This does not show that [T.W.] or any other residents were in imminent danger. Additionally, Woodside staff do not give space to residents, but close in on them, escalating their behavior thereby creating a need for restraint. This is not a trauma-informed approach and is clearly not an effective intervention or an appropriate de-escalation plan, given [T.W.'s] trauma history."

328. On May 26, 2018. Defendants Dubuc, Cathcart, and Rochon restrained T.W. and "escorted" her to her room.

329. RLSIU investigators reviewed a video of this incident and concluded that Woodside staff members engage in conduct that only leads to escalation.

330. According to those investigators, "this is an identified theme in some of the restraint and incident reports reviewed by [an RLSIU investigator]. Woodside staff do not give space to residents but close in on them, almost escalating them into needing a restraint. This is not a trauma-informed approach and does not seem to be effective intervention or an appropriate de-escalation plan, given [T.W.'s] trauma history."

331. During this restraint, Defendant Dubuc pushed his fingers into T.W.'s left eye orbital socket, leaving a 50-cent size bruise on T.W.'s face.

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

333. 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."

334. At this point, it is impossible to catalogue every instance of the abuse T.W. at Woodside and identify which of the defendants named in this Amended Complaint participated in that abuse because Plaintiff's counsel has yet to receive a copy of T.W.'s DCF file and the video recordings of Woodside staff interactions with her.

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FACTUAL BACKGROUND
G.W.

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

336. 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.

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

338. Defendants Steward gave many of the orders to restrain and seclude G.W. after receiving requests from, among others, Defendants Hatin and Bunnell.

339. According to incident reports, Defendants Simons, Hamlin, Rochon, Ruggles, Dubuc, Brice, Bunnell, Scrubb, Piette, Weiner, and Martinez either participated in, or witnessed these unlawful physical restraints.

340. By ordering or participating in these restraints, or by failing to intervene to protect G.W. during these restraints, Defendants Steward, Simons, Hamlin, Rochon, Ruggles, Dubuc, Brice, Bunnell, Scrubb, Piette, Weiner, and Martinez failed to fulfill their constitutional obligation to protect G.W. from harm.

341. In addition, on November 17, 2016, Defendant Bunnell notified Defendant Dale that G.W. was subjected to solitary confinement in the North Unit.

342. After receiving this message, Defendant Dale did not intervene or take any other steps to protect G.W. from this abuse, and thus failed to fulfill his constitutional obligation to protect G.W. from harm.

343. 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.

344. 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."

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

346. On December 2, 2016, an attorney from the Office of the Juvenile Defender met with Defendants Simons and Shea and explained to them in great detail how G.W., who was 13 years old at the time, was being mistreated at Woodside.

347. The attorney from the Office of the Juvenile Defender told Defendants Simons and Shea that G.W. had gained so much weight while being held in solitary confinement in the North Unit that stretch marks could be seen on her skin.

348. G.W.'s basic needs, including exercise and personal hygiene, were ignored. Because the water was shut off in the cell, the toilet went unflushed and the room smelled so bad that visitors had to mask the odor with Vick's VapoRub.

349. Defendants Simons and Shea dismissed these complaints and did nothing to improve G.W.'s conditions of confinement. By doing so, Defendants Simons and Shea violated their constitution duty to protect G.W. from harm.

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

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

352. Defendant Simons signed G.W.'s seclusion orders on June 4, 2019 and June 18, 2018.

353. In addition, G.W. was subjected to repeated physical restraints throughout the month of June 2018.

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

~~355. One video captures Woodside staff rushing in to her cell and pushing her against the wall with a large riot shield.~~

~~356. Another shows her naked and screaming as Woodside staff members drag her across the floor.~~

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355. On June 4, 2019, Defendants Simons, Cathcart, Bunnell, and others are seen on a video recording entering G.W.'s isolation cell to put a smock on her.

356. In the video, Defendant Bunnell is wearing the green jacket. Weiner is wearing the green tee-shirt. Defendant Cathcart is the one wearing glasses with a checked shirt. Defendant Simon has a beard and is wearing a checked shirt. Simons tells G.W. to "take it off."

357. After the men enter G.W.'s isolation cell, G.W. says in a loud voice that she is not doing anything wrong. Defendant Simons yells "Down, down." Defendant Bunnell and another male staff member hold G.W. face-down on the bed platform. As a male staff member uses metal bars to hold G.W.'s legs in place, Bunnell and Weiner hold G.W.'s arms behind her back and up toward the ceiling. Defendant Cathcart watches as this happens, holding a smock in his hands.

358. As G.W. screams "stop, don't do this," and with Defendants Simons and Weiner holding her arms up and behind her back, Defendants Bunnell and another male staff member forcibly remove her clothes. As this is happening, G.W. sounds like she is vomiting. As Simons tells G.W. she is "fine," G.W. tells the men to let go of her. Bunnell then forcibly removes G.W.'s shirt and gives it to a male staff member who throws it out of the cell. G.W. continues to scream and says that she is unable to breath. Simons and the others then quickly leave, locking the cell door once they are all out.

359. On June 4, 2019, Defendants Simon, Cathcart, and Bunnell, along with several other staff members, surround G.W. who is on the floor at the top of a stairway.

360. The video shows that G.W. is dressed in a tee-shirt. Bunnell is wearing a green jacket. Simons has a light checked shirt on, Cathcart is wearing the dark checked shirt.

361. As G.W. screams, Bunnell turns G.W. over, and while she is face-down, Bunnell pulls her lower legs up, crosses them, and leans into her legs. G.W. screams "my knee, ow, my knee."

362. By grabbing her arms that are still behind her back, Defendants Simons and Bunnell then lifts G.W. up from the floor. As G.W. continues to scream, Simons, Cathcart, and Bunnell then carry G.W. down the stairway.

363. When they get G.W. to the bottom of the stairs, Defendants Simons and Cathcart place handcuffs on G.W.'s wrists while her arms are still held high behind her back, as Bunnell holds her legs down.

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364. Defendants Simons, Bunnell, and Cathcart then pick G.W. up by her arms and legs and carry her down the hall as she screams "my neck" and "no."

365. After arriving at a cell, Defendants Simons, Bunnell, and Cathcart lower her to the floor and drag her into it by her arms which are still cuffed and behind her back.

366. Defendant Simons then puts his knee into G.W.'s back and asks Cathcart to uncuff her as she screams in pain. Bunnell can be seen kneeling on G.W.'s legs as the cuffs are taken off.

367. A female staff member then searches G.W. and finds a small screw in her bra.

368. On June 18, 2018, Defendants Cathcart, Weiner, and several other male staff members enter G.W.'s cell, bringing with them a riot shield.

369. As G.W. lies on her bed, Defendant Weiner and one of the male staff members presses the riot shield onto her chest and face.

370. Defendant Cathcart instructs the men to roll G.W. over so that they can remove her blanket and smock.

371. G.W. yells "there's no females" as she lies on the floor with the shield pressed up against her face.

372. As G.W. lies face-down on the floor with Weiner holding her arm up behind her back, Defendant Cathcart removes the smock, as G.W. screams "stop, stop, stop."

373. Once the smock has been removed, Cathcart, Weiner, and the others retreat, leaving G.W. lying naked on the cell floor.

374. On June 20, 2019, G.W.'s attorney filed the Verified Motion for a Protective Order in the Vermont Superior Court, Chittenden Family Division that alleged that G.W. was being abused at Woodside.

375. On June 24, 2019, the Vermont Superior Court held an evidentiary hearing on the motion for a protective order.

376. During the hearing, G.W.'s expert, Dr. Christopher Bellinci testified that "Woodside had placed [G.W.] at risk of physical and psychological harm by repeatedly restraining her on the floor and stripping her naked, subjecting her to dangerous and painful restraint techniques, and

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involuntarily escorting her down a flight of stairs. Dr. Bellonci explained that the involuntary removal of clothing and forced nudity are particularly damaging to someone [like G.W.] who has been a victim of sexual assault."

377. A video from June 27, 2019 shows Defendants Simons, Cathcart, Hamlin, Rochon, Dubuc, and other staff members confronting G.W. who is standing naked by her cell door, covered in feces.

378. A federal court described what it saw on ~~a third~~ **this** 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.

379. On June 28, 2019, G.W.'s attorney filed a Verified Motion for an Ex Parte Protective Order in the Vermont Superior Court, Chittenden Family Division, asking the court to issue an order "restraining the Commissioner of the Department for Children and Families and his agents continuing to confine [G.W.] at Woodside and order the Commissioner and his agents to transfer [G.W.] to a hospital immediately."

380. The motion refers to an incident on June 26, 2019 during which G.W.'s safety smock, along with her blanket, were forcibly removed by Woodside staff members and that Defendants Simons and Cathcart "grappled with [G.W.] while she was naked and forced her back into her room." Shortly thereafter, Simons and Cathcart put their hands on G.W., who was naked, and " 'escorted' her involuntarily to her room."

381. On June 28, 2019, Defendants Dubuc and Martinez, along with two unidentified men dress in Tyvex suits, entered G.W.'s cell as she was lying naked on the floor.

382. Defendant Dubuc is wearing a blue shirt and shorts. Defendant Martinez is seen standing next to Dubuc.

383. The two men in the Tyvex suits then drag G.W., who is face down, along the cell floor.

384. As G.W. screams, the two men in the Tyvex suits pull G.W.'s arms behind her back, while Defendant Dubuc stands over her naked body.

385. The men are then seen retreating from the cell, leaving a still-screaming G.W. lying naked and alone on the floor as they close the feces-smeared cell door behind them.

386. On June 9, 2019, the Essex Rescue squad was called to Woodside to deal with an emergency involving G.W.

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387. The Woodside Incident Report indicates that Defendants Simons, Piette, Hatin, and Rochon either participated or witnessed what happened to G.W. on June 9, 2019.

388. Two days later, a member of the Essex Rescue squad sent an email to Defendant Simons and reported what she had witnessed:

> My name is Ashley Williams, I am an AEMT with Essex Rescue. This past Sunday, June 9 at 5:34 PM, we received a call on our non-emergency line for a 911 ambulance for a 16 year old female hitting her head against the wall. We directed the staff to call 911 and responded to the Woodside Correctional Facility. We were met outside by staff who indicated that the patient was now stating she could not move. A staff member informed me that they had been in contact with First Call that morning and had concerns that the patient was prone to self harm. He also stated that she was manipulative.
>
> When I entered her cell she was laying flat on the bed, naked except for a smock. The cell was covered with water, urine and menstrual fluid. She was soaking wet from head to toe, as was her smock. She was shivering uncontrollably and her extremities were extremely cold to the touch.
>
> We were able to take her to the hospital without incident, however upon arrival at the E.D. when the nurse from Woodside Correctional was questioned in regards to her medical and mental health history and he reported that her only mental health history was PTSD, however her list of allergies included antipsychotics which would indicate a more extensive mental health history.
>
> I am writing because I am concerned about multiple issues.
> 1) The staff were aware of self-injurious behaviors as early as that morning, why was she not in a more protected cell where she could not hurt herself.
> 2) Why was she able to lie in her own excrement and water long enough to be progressing towards hypothermia?
> 3) It is important that staff know and are able to provide adequate medical and mental health history.
> 4) Staff were aware that she had a history of manipulative behavior yet she was naked and alone with all male staffers while there were other female staffers available.
> 5) Staff need to be made aware that emergency calls need to be directed to 911.

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> **Obviously we were not present all day and do not know all of the details leading up to the call, however I wanted to bring these issues to your attention.**
>
> **Please feel free to contact me with any other questions.**

389. Defendant Simons responded to this report as follows:

> **Thank you for taking the time to look out for one of our kids. I have copied the Residential Licensing and Special Investigations Unit investigator in charge of regulating Woodside with your concerns. As it turns out we have an opportunity for you to come to Woodside to make a difference if you like. You can apply to a Woodside Worker B position online.**

390. An investigator from RLSIU contacted the member of the Essex Recue squad who reported what she witnessed on June 9, 2019. At this time, it is unclear what happened with that investigation.

391. The Woodside Incident Reports related to the June 9, 2019 incident filed by Defendants Hatin, Piette, and Rochon do not explain why G.W. "was laying flat on the bed, naked except for a smock. The cell was covered with water, urine and menstrual fluid. She was soaking wet from head to toe, as was her smock. She was shivering uncontrollably and her extremities were extremely cold to the touch" when the EMT's from Essex Recue arrived at the scene.

392. Defendant Cathcart approved the Operations Supervisor's report of the incident which claimed that the staff's "[q]uick response and staff knowing how to utilize their skills ensured we kept the resident safe when the resident was attempting to be unsafe and self harm."

393. By June 2019, nearly six months after RLSIU had concluded that the conditions of confinement at Woodside violated numerous state regulations, and nearly three years after an attorney from the Office of the Juvenile Defender had described the inhumane conditions of confinement in the North Unit, DCF officials, including Defendants Schatz, Shea, Gooley, and Dale, and Woodside managers and clinicians, including Defendants Simons, Steward, Cathcart, Hatin, Bunnell, and Dubuc were aware that vulnerable children detained at Woodside, including G.W., were subjected to unspeakable abuse at the facility.

394. Yet none of these defendants made any serious effort to prevent the continuing abuse of children whose safety and welfare was their responsibility, thus violating their constitutional obligation to protect Woodside detainees from the abuse and horror graphically depicted in the G.W. videos from June 2019.

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395. At this point, it is impossible to catalogue every instance of the abuse G.W. at Woodside and identify which of the defendants named in this Amended Complaint participated in that abuse because Plaintiff's counsel has yet to receive a copy of G.W.'s DCF file and the video recordings of Woodside staff interactions with her.

FACTUAL BACKGROUND
T.F.

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

397. 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.

398. 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.

399. 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.

400. It is not known at this time who gave the orders to send T.F. into the North Unit or who authorized her continued placement in the North Unit after the first seven days were up.

401. However, by this time, Defendants Schatz, Shea, and Gooley were aware that children detained at Woodside were being transferred to solitary confinement in the North Unit and made no effort to stop the practice, thus violating their constitutional duty to protect those children from harm.

402. 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.

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

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

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

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

407. The RLSIU report indicates the video of this incident shows that before he restrained T.F., Defendant Bunnell was "angry, agitated, and aggressive."

408. As staff members struggled with T.F., Defendant Bunnell "is seen with his knee on [T.F.'s] back. This is in direct contradiction to Woodside's restraint training in which staff members are instructed to never place their weight on a child's back as they are restrained in the prone position due to risk of asphyxia."

409. Defendant Piette then "drags [T.F.] by her feet, across the carpeted floor and into her room, It appears Mr. Bunnell is still attempting to restrain her, and his weight is on her as she is being dragged. [T.F.] suffered friction burns from being dragged."

410. T.F. suffered significant rug burns on her body as a result of being dragged across the floor by Defendant Piette.

411. After T.F. was dragged across the floor, she was taken into a room where Defendant Bunnell punched her in the face with a closed fist.

412. T.F. later informed Defendant Steward that Defendant Bunnell had punched her in the face.

413. Even though she was a mandatory reporter, Defendant Steward did not inform the proper authorities that T.F. had told her that T.F. had been assaulted by Defendant Bunnell.

414. Following this incident, T.F. was locked away in the North Unit, where she made to sit in wet clothes on a slab with no blankets and no bedding.

415. T.F. spent the rest of July 2018 locked away in the North Unit.

416. After T.F.'s attorney had filed her Motion for a Protective Order, Defendants Steward and Bunnell pressured T.F. to dismiss her lawsuit.

417. Over the objections of T.F.'s attorney, Defendant Steward facilitated a meeting between T.F. and Bunnell, during which Bunnell tried to persuade T.F. that he did not intend to punch T.F. and that it was an accident.

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418. Following this meeting, and over T.F.'s objections, Defendant Bunnell's attempts to persuade T.F. that he punched her accidently continued.

419. At some point, Defendant Bunnell entered T.F.'s North Unit cell and told her that he would not deliberately hit her because T.F. was like a daughter to him.

420. After Defendant Steward testified at a court hearing held on Motion for a Protective Order, Defendant Steward told T.F. that if she continued to pursue her court case, T.F. would lose her relationship with Steward.

421. Defendant Steward then advised T.F. that her attorney was trying to turn T.F. against Woodside which "had been there for [T.F.] through [her] hardest times" and that T.F.'s attorney was trying to "split up" T.F.'s relationship with Steward.

422. Defendants Steward and Simons then advised T.F. to write a letter, instead of placing a call, to her attorney to inform the attorney that T.F. wanted her court case dismissed.

423. Defendants Steward and Simons told T.F. that if she called her attorney, her attorney might "say something to wrap [her] back in."

424. As a result of Defendants Steward's, Bunnell's, and Simons' pressure campaign, T.F. sent the letter to her attorney, who subsequently filed a motion to dismiss T.F.'s court case.

425. On September 25, 2018, one of DCF's attorneys, Assistant Attorney General Kate Lucier, interviewed T.F.. T.F.'s attorney was present during the interview.

426. During the interview, T.F. told AAG Lucier about Defendant Bunnell's assaultive conduct on June 27, 2018 and Defendants Steward's, Bunnell's, and Simons' campaign to pressure T.F. to dismiss the court case initiated on July 6, 2018 when her attorney filed the Motion for a Protective Order.

427. 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," and "[h]yperextension of joints;" and Regulation 651 ("Restraint shall be used only to

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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").

428. At this point, it is impossible to catalogue every instance of the abuse T.F. at Woodside and identify which of the defendants named in this Amended Complaint participated in that abuse because Plaintiff's counsel has yet to receive a copy of T.F.'s DCF file and the video recordings of Woodside staff interactions with her.

FACTUAL BACKGROUND
B.C.

429. 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.

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

431. 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.

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

433. While ~~detained~~ **imprisoned** at Woodside, B.C. was repeatedly subjected to improper physical restraints and solitary confinement.

434. On August 14, 2017, an attorney with the Office of the Juvenile Defender filed a grievance with Defendant Simons on behalf of Plaintiff B.C.

435. The grievance complained that B.C. suffered a sprained ankle while being restrained by two male Woodside staff members on July 29, 2017.

436. On August 17, 2017, an attorney with the Office of the Juvenile Defender filed a second grievance with Defendant Gooley on behalf of Plaintiff B.C.

437. The grievance indicated that because Defendant Simons improperly restrained on August 13, 2017, the attorney asked Defendant Gooley to review both the original grievance related to the July 29, 2017 restraint and the second restraint involving Defendant Simons.

438. On August 6, 2018, B.C. was restrained when unidentified staff members took her blankets away.

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439. **Several weeks later, 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.

440. Defendants Simons and Steward ordered Defendant Hatin to enter B.C.'s isolation cell and remove her clothing.

441. This incident was captured on a video/audio recording.

442. The video provides a harrowing account of B.C.'s treatment at the hands of Defendants Hatin and Ruggles as B.C.'s primal screams can be heard throughout the recording.

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

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

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

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

447. Defendant D'Amico witnessed B.C. pants-less on day two after the forcible removal of her clothing on 8/25/18. D'Amico made it known to many people, including Defendants Simons and Shea, how horrible and inhumane she thought that was.

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

449. 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" and that the restraint "occurred without any visible imminent risk of harm to self or others."

450. 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."

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451. 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").

452. By late August 2018, B.C. had been confined to a seclusion cell in the North Unit for about a month.

453. It is not known at this time who ordered B.C.'s transfer to solitary confinement in the North Unit or who reviewed and approved further confinement after B.C. had spent her first seven days in the North Unit.

454. However, by this time, Defendants Schatz, Shea, and Gooley were aware that children detained at Woodside were being transferred to solitary confinement in the North Unit and made no effort to stop the practice, thus violating their constitutional duty to protect those children from harm.

455. While B.C. was confined to her cell in the North Unit, she was forced to shower naked in front of staff, could not wear any clothing, and could not have books, paper, or writing implements.

456. In August 2018, B.C. continued to have no access to group programming, education, or recreation at Woodside.

457. On August 23, 2018, B.C.'s attorney filed a motion in the Vermont Family Court requesting reconsideration of a court order denying a request for a protective order that would have required DCF to secure an appropriate alternative placement for B.C. by a date certain.

458. The motion alleged that "Woodside has restrained [B.C.] by pinning her face-down against the floor or a wall, pulling her arms behind her back, and twisting her arms."

459. It is not known at this time which Woodside staff members engaged in this conduct.

460. Counsel attached an affidavit prepared by Heather Lynch, a licensed psychologist who was familiar with the conditions of B.C.'s confinement at Woodside.

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461. In her affidavit, Lynch reported that "[B.C.'s] current placement is not meeting her needs for treatment and comfort … [and that] [m]aintaining [B.C.] in deprived conditions and not providing her with appropriate treatment accomodations is detrimental to [B.C.'s] ability to heal."

462. At this point, it is impossible to catalogue every instance of the abuse B.C. at Woodside and identify which of the defendants named in this Amended Complaint participated in that abuse because Plaintiff's counsel has yet to receive a copy of B.C.'s DCF file and the video recordings of Woodside staff interactions with her.

FACTUAL BACKGROUND
A.L.

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

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

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

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

467. Defendant Steward approved Defendant Hamlin's request to restrain A.L.

468. The reports related to this incident do not explain how A.L. suffered the "rug burn" on his right shoulder or why he complained about a sore right elbow.

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

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

471. 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.

472. On May 2, 2018, an attorney with the Office of the Juvenile Defender submitted a grievance on behalf of A.L. to Defendant Simons objecting to A.L.'s transfer to a seclusion cell in the North Unit.

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473. 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.

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

475. 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."

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

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

478. 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).

479. RTPRI investigators interviewed Todd Fountain of JKM Training.

480. 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.

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

482. 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."

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483. 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."

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

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

486. 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.

487. 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").

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

489. 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."

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

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

492. At this point, it is impossible to catalogue every instance of the abuse A.L. at Woodside and identify which of the defendants named in this Amended Complaint participated in that abuse because Plaintiff's counsel has yet to receive a copy of A.L.'s DCF file and the video recordings of Woodside staff interactions with him.

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CAUSES OF ACTION

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

~~493. Plaintiffs repeat and incorporate herein paragraphs 1 through 220.~~

~~494. At all times material hereto, Defendants were acting under color of state law.~~

~~495. The Eighth Amendment guarantees Plaintiffs' right to be free from cruel and unusual punishment.~~

~~496. Defendants were vested with control over the custody and care of Plaintiffs.~~

~~497. 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.~~

~~498. 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~~

~~499. Plaintiffs repeat and incorporate herein paragraphs 1 through 226.~~

~~500. At all times material hereto, Defendants were acting under color of state law.~~

~~501. 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.~~

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

~~502. Plaintiffs repeat and incorporate herein paragraphs 1 through 229.~~

~~503. At all times material hereto, Defendants were acting under color of state law.~~

~~504. The Fourteenth Amendment guarantees that no person shall be deprived of life, liberty, or property, without due process of law.~~

~~505. Defendants were vested with control over the custody and care of Plaintiffs.~~

~~506. 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.~~

~~507. 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 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~~

~~508. Plaintiffs repeat and incorporate herein paragraphs 1 through 235.~~

~~509. At all times material hereto, Defendants were acting under color of state law.~~

~~510. The Eight Amendment guarantees Plaintiffs' right to be free from cruel and unusual punishment.~~

~~511. Defendants were vested with control over the custody and care of Plaintiffs.~~

~~512. 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.~~

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~~513. 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~~

~~514. Plaintiffs repeat and incorporate herein paragraphs 1 through 241.~~

~~515. At all times material hereto, Defendants were acting under color of state law.~~

~~516. The Eighth Amendment and Fourteenth Amendments guarantees Plaintiffs' right to bodily integrity and to be secure in their person and free from excessive force.~~

~~517. 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.~~

~~518. The use of force by Defendants shocks the conscience.~~

~~519. The Defendants used such force as was objectively unreasonable, excessive, and conscience shocking physical force.~~

~~520. 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.~~

~~521. The individual Defendants acted in concert and joint action with each other.~~

~~522. 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.~~

~~523. Plaintiffs were detained at Woodside and the Middlesex Adolescent Program, Defendants unlawfully isolated Plaintiffs in seclusion cells in Woodside North Unit, to physically restrain them in violation of Plaintiffs' constitutional~~

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~~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~~

~~524. Plaintiffs repeat and incorporate herein paragraphs 1 through 251.~~

~~525. At all times material hereto, Defendants were acting under color of state law.~~

~~526. The Fourteenth Amendment guarantees that no person shall be deprived of life, liberty, or property, without due process of law.~~

~~527. Defendants were vested with control over the custody and care of Plaintiffs.~~

~~528. 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.~~

~~529. Defendants violated Plaintiffs' Fourteenth Amendment rights when they confined, restrained, treated, and punished Plaintiffs in the aforementioned manner.~~

~~530. Defendants deprived Plaintiffs of their protected liberty interest by punishing, restraining, and confining Plaintiffs in the manner aforementioned.~~

~~531. 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.~~

~~532. 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, 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. §1983.~~

~~COUNT SEVEN~~

~~Defendants were deliberately indifferent to the violations of Plaintiffs' rights perpetrated by staff members at the~~

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~~Natchez Trace Youth Academy~~

~~533. Plaintiffs repeat and incorporate herein paragraphs 1 through 260.~~

~~534. At all times material hereto, Defendants Schatz, Dale, D'Amico, Longchamp, Harriman, and Wolcott were acting under color of state law.~~

~~535. The Fourteenth Amendment guarantees that no person shall be deprived of life, liberty, or property, without due process of law.~~

~~536. Defendants Schatz, Dale, D'Amico, Longchamp, Harriman, and Wolcott were vested with control over the custody and care of Plaintiffs.~~

~~537. 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.~~

~~538. 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.~~

~~COUNT EIGHT~~

~~Conspiracy to violate the First Amendment's Right to Petition the Government for a Redress of Grievences~~

~~539. Plaintiffs repeat and incorporate herein paragraphs 1 through 266.~~

~~540. At all times material hereto, Defendants were acting under color of state law.~~

~~541. The First Amendment guarantees Plaintiffs' right to petition the government for a redress of grievances.~~

~~542. Defendants were vested with control over the custody and care of Plaintiffs.~~

~~543. 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 their suffered at Woodside in violation of Plaintiffs'~~

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~~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 Grievences~~

~~544. Plaintiffs repeat and incorporate herein paragraphs 1 through 271.~~

~~545. At all times material hereto, Defendants were acting under color of state law.~~

~~546. The First Amendment guarantees Plaintiffs' right to petition the government for a redress of grievances.~~

~~547. Defendants were vested with control over the custody and care of Plaintiffs.~~

~~548. 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 their 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~~

~~549. Plaintiffs repeat and incorporate herein paragraphs 1 through 276.~~

~~550. 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.~~

~~551. Based on Defendants' willful and wanton disregard for, and deliberate indifference to, Plaintiff's constitutional rights, Plaintiffs are entitled to exemplary damages.~~

~~552. 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.~~

~~553.~~

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PENDENT STATE CLAIMS

COUNT TEN
Assault and Battery

554. Plaintiffs repeat and incorporate herein paragraphs 1 through 281

555. 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

556. 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.

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

COUNT ELEVEN
Intentional Infliction of Emotional Harm

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

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

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

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

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

563. 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.

564. 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.

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~~DAMAGES~~
~~Intentional Infliction of Emotional Harm~~

~~565. 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~~

~~566. Plaintiffs repeat and incorporate herein paragraphs 1 through 293.~~

~~567. By statute, Defendants were vested with control, custody, and supervision of Plaintiffs and had a duty to protect Plaintiffs from foreseeable harm.~~

~~568. 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~~

~~569. As a result of their grossly negligent and reckless conduct, Defendants breached their duty of care to Plaintiffs.~~

~~DAMAGES – Grossly negligent and reckless supervision~~

~~570. 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.~~

COUNT ONE

Violations of the Eighth Amendment's ban on cruel and unusual punishment

493. Plaintiffs repeat and incorporate herein paragraphs 1 through 573.

494. At all times material hereto, Defendants Schatz, Shea, Gooley, Wolcott, Simons, Steward, Bunnell, Cathcart, Dubuc, Scrubb, Hatin, Weiner, Martinez, Ruggles, Piette, Rochon, Dale, D'Amico, Hamlin, and Brice were acting under color of state law.

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

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

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497. In addition, Defendants Schatz, Shea, Gooley, Wolcott, Simons, Steward, Bunnell, Cathcart, Dubuc, Scrubb, Hatin, Weiner, Martinez, Ruggles, Piette, Rochon, Dale, D'Amico, Hamlin, and Brice 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.

498. Between 2017 and 2020, while Plaintiffs were detained at Woodside and the Middlesex Adolescent Program, Defendants Schatz, Shea, Gooley, Wolcott, Simons, Steward, Bunnell, Cathcart, Dubuc, Scrubb, Hatin, Weiner, Martinez, Ruggles, Piette, Rochon, Dale, Hamlin, and Brice either 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, or failed to fulfill their constitutional duty to ensure that Plaintiffs were reasonably safe, and to detect and correct problems that could cause injury to Plaintiffs.

COUNT TWO

Violations of the Eighth Amendment's and Fourteenth Amendment's ban on the use of excessive force

499. Plaintiffs repeat and incorporate herein paragraphs 1 through 579.

500. At all times material hereto, Defendants Schatz, Shea, Gooley, Wolcott, D'Amico, Simons, Steward, Bunnell, Cathcart, Dubuc, Scrubb, Hatin, Weiner, Martinez, Ruggles, Piette, Rochon, Dale, Hamlin, and Brice were acting under color of state law.

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

502. The actions and use of force, or their failure to fulfill their constitutional duty to ensure that Plaintiffs were reasonably safe and to detect and correct problems that could cause injury to Plaintiffs. as described herein, of Defendants Schatz, Shea, Gooley, Wolcott, D'Amico, Simons, Steward, Bunnell, Cathcart, Dubuc, Scrubb, Hatin, Weiner, Martinez, Ruggles, Piette, Rochon, Dale, Hamlin, and Brice were also malicious and/or involved reckless, callous, and deliberate indifference to Plaintiffs' federally protected rights.

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

504. Defendants Simons, Steward, Bunnell, Cathcart, Dubuc, Hatin, Weiner, Martinez, Ruggles, Piette, Rochon, Hamlin, and Brice used such force as was objectively unreasonable, excessive, and conscience-shocking physical force.

505. Defendants Schatz, Shea, Gooley, Wolcott, Simons, Steward, Bunnell, Cathcart, Dubuc, Scrubb, Hatin, Weiner, Martinez, Ruggles, Piette, Rochon, Dale, Hamlin, and Brice failed to take 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.

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

507. 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.

508. Plaintiffs were detained at Woodside and the Middlesex Adolescent Program, Defendants Schatz, Shea, Gooley, Wolcott, Simons, Steward, Bunnell, Cathcart, Dubuc, Scrubb, Hatin, Weiner, Martinez, Ruggles, Piette, Rochon, Dale, Hamlin, and Brice either unlawfully isolated 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. §1983 or failed to fulfill their constitutional duty to ensure that Plaintiffs were reasonably safe and to detect and correct problems that could cause injury to Plaintiffs.

COUNT THREE

Deprivation of Plaintiffs' rights to due process of law as guaranteed by the Fourteenth Amendment

509. Plaintiffs repeat and incorporate herein paragraphs 1 through 589.

510. At all times material hereto, Defendants Schatz, Shea, Gooley, Wolcott, D'Amico, Simons, Steward, Bunnell, Cathcart, Dubuc, Scrubb, Hatin, Weiner, Martinez, Ruggles, Piette, Rochon, Dale, Hamlin, and Brice were acting under color of state law.

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

512. Defendants Schatz, Shea, Gooley, Wolcott, D'Amico, Simons, Steward, Bunnell, Cathcart, Dubuc, Scrubb, Hatin, Weiner, Martinez, Ruggles, Piette, Rochon, Dale, Hamlin, and Brice were vested with control over the custody and care of Plaintiffs.

513. Defendants Schatz, Shea, Gooley, Wolcott, D'Amico, Simons, Steward, Bunnell, Cathcart, Dubuc, Scrubb, Hatin, Weiner, Martinez, Ruggles, Piette, Rochon, Dale, Hamlin, and Brice 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.

514. Defendants Schatz, Shea, Gooley, Wolcott, D'Amico, Simons, Steward, Bunnell, Cathcart, Dubuc, Scrubb, Hatin, Weiner, Martinez, Ruggles, Piette, Rochon, Dale, Hamlin, and Brice violated Plaintiffs' Fourteenth Amendment rights when they confined, restrained, treated, and punished Plaintiffs in the aforementioned manner or failed to fulfill their constitutional duty to ensure that Plaintiffs were reasonably safe and to detect and correct problems that could cause injury to Plaintiffs.

515. Defendants Schatz, Shea, Gooley, Wolcott, D'Amico, Simons, Steward, Bunnell, Cathcart, Dubuc, Scrubb, Hatin, Weiner, Martinez, Ruggles, Piette, Rochon, Dale, Hamlin, and Brice deprived Plaintiffs of their protected liberty interest by punishing, restraining, and confining Plaintiffs in the manner aforementioned or failed to fulfill their constitutional duty to ensure that Plaintiffs were reasonably safe and to detect and correct problems that could cause injury to Plaintiffs.

516. The aforementioned acts of Defendants Schatz, Shea, Gooley, Wolcott, D'Amico, Simons, Steward, Bunnell, Cathcart, Dubuc, Scrubb, Hatin, Weiner, Martinez, Ruggles, Piette, Rochon, Dale, Hamlin, and Brice 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.

517. Between 2016 and 2020, while Plaintiffs were detained at Woodside and the Middlesex Adolescent Program, Defendants Schatz, Shea, Gooley, Wolcott, D'Amico, Simons, Steward, Bunnell, Cathcart, Dubuc, Scrubb, Hatin, Weiner, Martinez, Ruggles, Piette, Rochon, Dale, Hamlin, and Brice either 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

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Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. §1983 or failed to fulfill their constitutional duty to ensure that Plaintiffs were reasonably safe and to detect and correct problems that could cause injury to Plaintiffs.

COUNT FOUR

Defendants Schatz, Dale, D'Amico, Longchamp, Harriman and Wolcott violated R.H.'s and D.H.'s Eighth Amendment right against cruel and unusual punishment and their Fourteenth Amendment right to due process of law and were deliberately indifferent to the abuse perpetrated against R.H. and D.H. by staff members at the Natchez Trace Youth Academy

518. Plaintiffs repeat and incorporate herein paragraphs 1 through 598.

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

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

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

522. 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.

523. 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 FIVE

Defendants Simons, Steward, and Bunnell violated R.H.'s and T.F.'s First Amendment's Right to Petition the Government for a Redress of Grievances

524. Plaintiffs repeat and incorporate herein paragraphs 1 through 604.

525. At all times material hereto, Defendants Simon, Steward, and Bunnell were acting under color of state law.

526. The First Amendment guarantees Plaintiff R.H.'s and T.F.'s right to petition the government for a redress of grievances.

527. Defendants Simons, Steward, and Bunnell were vested with control over the custody and care of Plaintiffs R.H. and T.F..

528. From July 2018 through September 2018, Defendant Steward unlawfully interfered with R.H.'s right to counsel by blocking his access to his attorney and threatening to retaliate against him if he continued to pursue the case his attorney filed in the Vermont Superior Court on July 6, 2018.

529. At the same time, Defendant Steward unlawfully promised R.H. that he would receive certain additional privileges if he dropped his lawsuit.

530. In August and September 2018, Defendants Simons and Steward unlawfully pressured R.H. to contact his attorney and tell her to dismiss the case his attorney filed in the Vermont Superior Court on July 6, 2018.

531. On September 11, 2018, R.H. finally succumbed to Defendants Simons' and Steward's unlawful pressure campaign and informed his attorneys he wanted his case dismissed.

532. In response to R.H.'s September 11, 2018 letter, his attorneys dismissed the Complaint.

533. On July 5, 2018, T.F.'s attorney filed a Motion for a Protective Order in the Vermont Superior Court, Caledonia Family Division, in which T.F. alleged that Defendant Bunnell had assaulted her on June 27, 2018 by punching her in the face.

534. T.F. told Defendant Steward about the assault, but Steward did not report Bunnell's assault to the appropriate authorities even though she was mandated to do so.

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535. After T.F. filed the Motion for a Protective Order, Defendants Steward and Bunnell unlawfully pressured T.F. as described above to dismiss her lawsuit.

536. While she was still detained at Woodside, T.F. ultimately succumbed to Defendants Steward's and Bunnell's unlawful pressure campaign, and instructed her attorney to dismiss the case in a letter Defendant Steward advised her to write.

537. Defendants Simons, Steward, and Bunnell retaliated against R.H. and T.F. after they registered complaints about the abuse their 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.

COUNT SIX

Supervisory liability for the failing to supervise subordinates who violated Plaintiffs' constitutional rights

538. Plaintiffs repeat and incorporate herein paragraphs 1 through 618.

539. Defendants Schatz, Shea, Gooley, Wolcott, and Simons, after receiving repeated reports, complaints, grievances, and investigatory reports prepared by RLSIU about the abuse of Woodside detainees, demonstrated deliberate indifference to Plaintiffs' rights to be free from cruel and unusual punishment, excessive force, and solitary confinement failed to fulfill their constitutional duty to ensure that Plaintiffs were reasonably safe and to detect and correct problems that could cause injury to Plaintiffs in violation of Plaintiffs' Eighth Amendment rights against excessive force and cruel and unusual punishment and their 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.

DAMAGES – COUNTS ONE THROUGH SIX

540. Plaintiffs repeat and incorporate herein paragraphs 1 through 620.

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

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

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

PENDENT STATE CLAIMS

COUNT SEVEN
Assault and Battery

544. Plaintiffs repeat and incorporate herein paragraphs 1 through 624.

545. While Plaintiffs were detained at Woodside and the Middlesex Adolescent Program between 2016 and 2020, Defendants Simons, Steward, Bunnell, Cathcart, Martinez, Weiner, Piette, Rochon, Hamlin, Ruggles, Hatin, and Bryce repeatedly placed them in isolation cells in the North Unit and physically assaulted them.

Damages for Assault and Battery

546. 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.

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

COUNT EIGHT

Intentional Infliction of Emotional Harm

548. Plaintiffs repeat and incorporate herein paragraphs 1 through 628.

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

550. The conduct of Defendants Simons, Steward, Dubuc, Hatin, Cathcart's, Bunnell, Weiner, Hamlin, Martinez, Piette, Ruggles, and Brice, whereby they unlawfully confined, restrained, mistreated, and punished Plaintiffs and failed to fulfill their constitutional duty to ensure that Plaintiffs were reasonably safe and to detect and correct problems that could cause injury to Plaintiffs was so outrageous and extreme as to go beyond all possible bounds of decency.

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551. These Defendants intended to cause emotional distress to Plaintiffs and/or acted in reckless disregard of the probability of causing emotional distress to Plaintiffs.

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

553. The aforementioned acts of Defendants Simons, Steward, Dubuc, Hatin, Cathcart's, Bunnell, Weiner, Hamlin, Martinez, Piette, Ruggles, and Brice 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.

554. By repeatedly placing Plaintiffs in isolation cells in Woodside North Unit and by physically assaulting them, the outrageous and inexcusable conduct of Defendants Simons, Steward, Dubuc, Hatin, Cathcart's, Bunnell, Weiner, Hamlin, Martinez, Piette, Ruggles, and Brice caused Plaintiffs to suffer from extreme emotional distress.

DAMAGES

Intentional Infliction of Emotional Harm

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

COUNT NINE

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

556. Plaintiffs repeat and incorporate herein paragraphs 1 through 636.

557. By statute, Defendants Schatz, Shea, Gooley, Wolcott, Simons were vested with control, custody, and supervision of Plaintiffs and had a duty to protect Plaintiffs from foreseeable harm.

558. Defendants Schatz, Shea, Gooley, Wolcott, and Simons 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

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

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DAMAGES

Grossly negligent and reckless supervision

560. 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.

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;

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

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

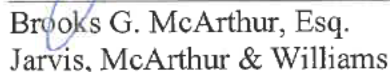
5. award Plaintiffs attorney's fees and expenses pursuant to 42 U.S.C. § 1988;

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

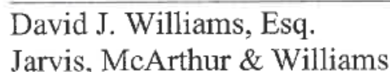
Plaintiffs hereby demand a trial by jury.

DATED at Burlington, Vermont this 23rd day of June, 2022.

Respectfully submitted,



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



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

Counsel for Plaintiffs

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

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CLERK

BY EH
DEPUTY CLERK

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

ORDER REGARDING STIPULATED MOTION TO AMEND COMPLAINT, FOR EXTENSION OF TIME TO FILE ANSWER AND FOR EXTENSION OF TIME TO FILE RESPONSES TO MOTIONS TO DISMISS
(Doc. 63)

The court GRANTS the unopposed motion to amend the complaint (Doc. 63).

The time for defendants to respond is extended to August 1, 2022. Defendants have the option of refiling a new motion to dismiss or filing a supplemental memorandum incorporating the existing motions (Doc. 49-58) and addressing any issues raised by the amendment.

Plaintiffs have until September 1, 2022, to file any response. Defendants have until September 15, 2022, to file any reply.

Dated at Burlington, in the District of Vermont, this 27th day of June, 2022.

Geoffrey W. Crawford, Chief Judge
United States District Court

U.S. DISTRICT COURT
DISTRICT OF VERMONT
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2022 JUN 28 PM 3:21

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BY AL
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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, Docket No. 5:21-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.

AMENDED 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 an 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 and assistant director at the Woodside Juvenile Rehabilitation Center, Essex, Vermont at all times relevant to this Complaint.

18. Defendant Bryan Scrubb was a staff member and clinician 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.

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

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 as residential services manager 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.

30. DCF is the Vermont state agency that is responsible for making sure children and youth are safe from abuse, have their basic needs met, and live in safe, supportive, and healthy environments.[1]

31. Because children detained at Woodside were in the custody of DCF, all of these defendants had a "special relationship" with G.W., R.H., T.W., B.C., T.F., A.L., and D.H.

32. Because of the defendants' "special relationship" with their wards held at Woodside, each of them had a constitutional duty enforceable through the Due Process Clause of the Fourteenth Amendment to the United States Constitution to protect G.W., R.H., T.W., B.C., T.F., A.L., and D.H. from harm, including physical abuse, excessive force, and solitary confinement in the North Unit.

33. Defendants Schatz, Shea, Wolcott, Gooley, Simons, Steward, Bunnell, Dubuc, Cathcart, Scrubb, Hatin, Weiner, Martinez, Ruggles, Piette, Rochon, Dale, D'Amico, Hamlin, and Brice either directly participated in the physical abuse of G.W., R.H., T.W., B.C., T.F., A.L., and D.H. and the use of solitary confinement, and/or failed to fulfill their constitutional obligation to protect G.W., R.H., T.W., B.C., T.F., A.L., and D.H. from these abusive and reprehensible practices.

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[1] *See* DCF.vermont.gov/protection/services.

34. In addition, because Defendants Schatz, Shea, Gooley, Wolcott, Dale, and Longchamp ignored repeated warnings about the unsafe conditions at the Natchez Trace Youth Academy and transferred R.H. and D.H. to that facility where they were subjected to unspeakable physical and mental abuse, those defendants failed to fulfill their constitutional obligation to protect R.H. and D.H. from the foreseeable mental and physical harm that befell them after those boys were dispatched to Natchez Trace.

JURISDICTION AND VENUE

35. 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).

36. The Court may exercise supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. §1367.

37. 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

38. DCF's Woodside Juvenile Rehabilitation Center was defined as follows: It "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).

39. 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."

40. 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 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."

41. From the outside, Woodside resembled an adult prison and had three living units, East, West, and North. 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

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in the East and West Units were allowed to congregate in large communal "day rooms" for group activities.

42. 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."

43. 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.

44. 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.

45. 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 whatever staff members delivered to the isolation cells.

46. 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 a paper or pencil.

47. 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.

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

49. Under the direction of Defendant Simons, Woodside staff members, including Defendants Cathcart, Hatin, Piette, Bunnell, Dubuc, Brice, 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.

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

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

52. 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."

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

54. On December 2, 2016, the attorney from the Office of the Juvenile Defender participated in a meeting to discuss the conditions of confinement in the North Unit with Defendants Simons and Shea.

55. Defendant Simons made an audio recording of that meeting and a transcript of the meeting has been prepared.

56. The meeting focused on the conditions of G.W.'s confinement in the North Unit (then known as the ICU), who was 13 years old at the time.

57. The attorney from the Office of the Juvenile Defender described in detail what was happening with her client, G.W., while G.W. was held in isolation.

58. The cell G.W. was held in was filthy, the toilet did not flush, and people entering the room had to mask the odor by using Vick's VapoRub.

59. G.W. had gained so much weight that the attorney noticed stretch marks on G.W.'s skin.

60. The attorney from the Office of the Juvenile Defender explained that such dramatic weight gain might have serious medical consequences, particularly since G.W. was prescribed anti-psychotic drugs.

61. G.W. had limited access to clothing and her hygiene was so poor that she smelled badly during a recent court appearance.

62. G.W. was not allowed to go outside to exercise, something that would have seriously impact a child who grew up in the country and was used to spending lots of time outdoors.

63. In addition, G.W. was not being provided with appropriate educational services.

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64. G.W.'s attorney was particularly concerned "about the psychological effect of not having any clothes and of being – being naked all the time in front of male staff."

65. G.W.'s attorney, who formally worked at DCF as a child abuse investigator, continued: "I think if we had a situation, again, to analogize to if this was apparent (sic) doing this to their child to control the child's mental health issues and this was not a facility doing this stuff, we would look at this as abuse. We would look at it in a very different way that we look at it here."

66. Defendant Shea agreed to look into the attorney's complaints and get back to her because "I know that there are other forums where this is being discussed."

67. In a letter dated December 2, 2016, Defendant Shea dismissed these complaints and suggested that G.W. needed to be held in solitary confinement for her own good.

68. Since this letter is dated the same day as G.W.'s attorney registered her complaints about G.W.'s conditions of confinement at Woodside, it is highly unlikely that Defendant Shea conducted an investigation into the specific allegations of potential child abuse brought to her attention earlier in the day.

69. When the Office of the Juvenile Defender registered complaints about the conditions of confinement at Woodside, Woodside officials, including Defendants Simons, Steward, and Bunnell, retaliated against the juveniles on whose behalf the complaints had been made, interfered with their right to counsel, and pressured R.H. and T.F. to sign notes to their attorneys indicating that they should withdraw motions for a protective orders filed in the Vermont Superior Court, Family Division.

70. No later than August 2018, DCF management officials, including Defendants Schatz, Shea, D'Amico, 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.[2]

71. 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.

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[2] In July 2018, R.H. asked the Vermont Superior Court to order Defendant Schatz to stop using painful restraints and isolation. G.W.'s attorney told Defendant Shea about the intolerable conditions in the North Unit in December 2016. In August 2018, Defendant D'Amico witnessed B.C. pant-less in her North Unit cell. In December 2017, Defendant Gooley received a copy of Defendant Simons' denial of A.L.'s grievance that he had been subjected to solitary confinement in the North Unit.

72. 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., who was a Woodside detainee.

73. 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 ..."

74. ~~In~~ On July **6,** 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.

75. 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..."

76. The complaint alleged that on April 17, 2018, Defendants Simons, Cathcart, and Martinez entered R.H.'s North Unit cell and proceeded to restrain him and strip the room of all of his belongings, including his bedding.

77. On April 18, 2018, Defendants Dubuc, Martinez, Rochon, and Weiner entered R.H.'s North Unit cell and proceeded to restrain him by pinning him face-down on his bed, and used a cutting tool to cut his shirt off of his body.

78. On May 4, 2018, Defendant Steward stood over R.H. as several large male Woodside staff members pinned R.H. to the ground and warned R.H. that they would take his cloths away if he could not be "safe" with them.

79. The Complaint indicates that there is a video recording of this incident.

80. During the May 4, 2018 restraint, Defendant Weiner "dug his finger into the pressure point on [R.H.'s] jaw and applied pressure to [his] neck to cause him pain."

81. Although they were mandated by state law to report Defendant Weiner's abusive conduct, Defendant Steward and others did not report what they had just witnessed to the appropriate authorities.

82. Finally, the complaint alleged that R.H. had been subjected to extended periods of solitary confinement in the North Unit and that on July 3, 2018, he was not allowed to speak with his attorney or meet with an expert hired by The Office of the Juvenile Defender "to evaluate the impact of Woodside's excessive use of restraint and seclusion with [R.H.]."

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83. On July 18, 2018, an attorney with the Office of the Juvenile Defender filed a Second Motion for an Emergency Protective Order on behalf of R.H. in the Vermont Superior Court, Franklin Family Division.

84. The second motion asked the court to issue an order requiring Defendant Schatz "and his agents to stop subjecting him 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 and stop subjecting him to forcible removal of his clothing during restraint."

85. The second motion alleged that since the first motion was filed, R.H. had, with a few exceptions, not been permitted to leave the North Unit and that he was "depressed as f---, because I'm in a f---ing box."

86. R.H. also alleged that Defendant Steward was trying to talk to him about his July 6, 2018 motion, telling him that "he was not going to get out of Woodside because he is 'already in the long-term program.'"

87. On August 22, 2018, the Office of the Juvenile Defender filed a Motion for an Emergency Protective Order in the Vermont Superior Court, Orleans Family Division, on behalf of B.C., who was a Woodside detainee.

88. The motion indicated that B.C. "has been restricted to the North Unit, deprived of clothing, and permitted extremely limited access to possessions and stimulating activities for four weeks as of this filing ... She is forced to shower naked in front of staff, cannot wear clothing, and cannot have books, paper, or writing implements."

89. The motion was accompanied from a licensed psychologist's affidavit stating that "[m]aintaining [B.C.] in deprived conditions and not providing her with appropriate treatment with accommodations is detrimental to [her] ability to heal."

90. On April 4, 2019, the Office of the Juvenile Defender filed a Complaint for Emergency Injunctive Relief on behalf of Juvenile #1, N.B., who was a Woodside detainee, against Defendant Schatz.[3]

91. The Complaint asked the court to issue an order requiring Woodside to "immediately stop using the purposeful infliction of pain during restraints to achieve compliance and immediately stop using prone positions."

92. The Complaint alleged that N.B. had been subjected to "pain compliance" techniques "on his legs, arms, shoulders, and wrists that caused significant pain and swelling of his joints due to hyperextension."

[3] N.B. is not a party to this action.

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93. On March 23, 2019, Juvenile #1 was locked in his cell in the North Unit and subsequently subjected to a video-recorded physical restraint involving several Woodside staff members.

94. The video shows the staff members forcing Juvenile #1 onto the floor of a "soothing room," holding him in a prone position with his arms raised "straight up in the air … the staff members appear to be twisting [Juvenile #1's] arms, particularly his right arm.

95. While this is happening, another staff member is "holding Juvenile #1's legs, crossed at the ankles, bent at the knees, and is forcefully pushing his feet into his buttocks."

96. During this restraint, which was ordered by Defendant Steward, "Juvenile #1 is struggling and repeatedly telling staff they were hurting him."

97. An affidavit executed by Paul Capcara, R.N. accompanied the Complaint and indicated that "the order to physically restrain Juvenile #1 was unjustified and an inappropriate response to suicidal ideation."

98. Relying on investigatory reports submitted to Defendant Schatz in October 2018 by DCF's Residential Licensing & Special Investigations Unit (RLSIU), the Complaint alleged that four other Woodside detainees had been subjected to the same painful techniques that RLSIU concluded had violated a regulation prohibiting "cruel, severe, unusual or unnecessary practices."

99. The four other detainees whose abuse was investigated by RLSIU are Plaintiffs R.H., T.W., B.C., and T.F.

100. On June 20, 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.

101. 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.

102. 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…"

103. The Juvenile Defender's verified motion included an affidavit executed by Paul Capcara, R.N., that reviewed Woodside's conditions of confinement,

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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.

104. 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."

105. On June 24, 2019, the Vermont Superior Court held a hearing on G.W.'s motion and heard the testimony of Dr. Christopher Bellonci.

106. Dr. Bellonci testified that "Woodside had placed [G.W.] at risk of physical and psychological harm by repeatedly restraining her on the floor and stripping her naked, subjecting her to dangerous and painful restraint techniques, and involuntarily escorting her down a flight of stairs. Dr. Bellonci explained that the involuntary removal of clothing and forced nudity are particularly damaging to someone [like G.W.] who has been a victim of sexual assault."

107. Following this hearing, on June 28, 2019[4], the Office of the Juvenile Defender filed a Verified Motion for an Ex Parte Protective Order in the Vermont Superior Court, Chittenden Family Division, asking the court to issue an order "restraining the Commissioner of the Department for Children and Families and his agents continuing to confine [G.W.] at Woodside and order the Commissioner and his agents to transfer [G.W.] to a hospital immediately."

108. The motion indicated that on June 26, 2019, G.W.'s safety smock, along with her blanket, were forcibly removed by Woodside staff members and that Defendants Simons and Cathcart "grappled with [G.W.] while she was naked and

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[4] Earlier that day, at 6:58 a.m., Defendants Dubuc and Martinez, along with two unidentified men dress in Tyvex suits, entered G.W.'s cell as she was lying naked on the floor. *See Paragraphs 384-388 below.*

Defendant Dubuc is wearing a blue shirt and shorts. Defendant Martinez is seen standing next to Dubuc. The two men in the Tyvex suits then drag G.W., who is face down, along the cell floor.

As G.W. screams, the two men in the Tyvex suits pull G.W.'s arms behind her back, while Defendant Dubuc stands over her naked body. The men are then seen retreating from the cell, leaving a still-screaming G.W. lying naked and alone on the floor as they close the feces-smeared cell door behind them.

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forced her back into her room." Shortly thereafter, Simons and Cathcart put their hands on G.W., who was naked, and " 'escorted' her involuntarily to her room."

109. The following day, G.W. was "supposed to have a telephone interview with Dr. Belloncі," but someone at Woodside canceled the phone interview without prior notice.

110. It was only after G.W.'s attorneys "reached out" to DCF's attorneys that G.W. was able to speak with Dr. Belloncі.

111. During this call, G.W. revealed to Dr. Belloncі that a Woodside staff member "had been making sexual comments while watching her urinate" and that the staff member asked her "to do 'sexual things.'"

112. After this call was completed, Woodside staff members removed her safety blanket, "leaving her naked."

113. On June 27, 2019, four male Woodside staff members, including Defendant Simons, "restrained her while she was naked" after forcibly entering her cell.

114. Emails from Defendants Dubuc, Bunnell, and Cathcart to Defendant Dale confirmed that they were involved in the incidents on June 24, 2019 and June 26, 2019 alleged in G.W.'s June 28, 2019 motion.

115. In addition to the actions filed in Vermont state courts, a series of grievances were filed objecting to the conditions of confinement at Woodside.

116. On December 29, 2017, an attorney with the Office of the Juvenile Defender filed a grievance on behalf of A.L.

117. The grievance requested a prompt review of A.L.'s placement in solitary confinement in the North Unit and immediate release from the North Unit.

118. In a memo dated December 29, 2017, Defendant Simons denied the grievance. Copies of Simons' memo were sent to Defendants Shea and Gooley.

119. On January 2, 2018, an attorney with the Office of the Juvenile Defender filed another grievance on behalf of A.L.

120. The grievance complained about the use of so-called "resets" that required an offending detainee to be secluded in a locked room, and requested a cessation of the use of these "resets."

121. On December 17, 2017, an attorney with the Office of the Juvenile Defender filed a grievance on behalf of D.H.

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122. The grievance alleged improper placement of D.H. into solitary confinement in the North Unit and that Defendants Simons and Cathcart had provided contradictory reasons for sending D.H. into the North Unit.

123. In addition, the grievance indicates that the attorney from the Office of the Juvenile Defender asked Defendant Steward to reconsider her order sending D.H. into solitary confinement because "it was not in line with applicable policy" and that Steward denied the request.

124. The grievance requested a prompt review of Defendants Simons' and Steward's decision to send D.H. into solitary confinement in the North Unit and immediate release from the North Unit.

125. In a memo dated December 18, 2017, Defendant Simons denied the grievance.

126. On August 14, 2017, an attorney with the Office of the Juvenile Defender filed a grievance with Defendant Simons on behalf of B.C.

127. B.C.'s grievance complained that B.C. suffered a sprained ankle while being restrained by two male Woodside staff members on July 29, 2017.

128. On August 17, 2017, an attorney with the Office of the Juvenile Defender filed a second grievance with Defendant Gooley on behalf of Plaintiff B.C.

129. The grievance indicated that because Defendant Simons improperly restrained on August 13, 2017, the attorney asked Defendant Gooley to review both the original grievance related to the July 29, 2017 restraint and the second restraint involving Defendant Simons.

130. On May 5, 2018, an attorney with the Office of the Juvenile defender filed a grievance on behalf of R.H.

131. The grievance complained about R.H.'s confinement in the North Unit and Defendant Weiner's unlawful conduct during the May 4, 2018 restraint as detailed in the Complaint subsequently filed by the Office of the Juvenile Defender on July 6, 2018.

132. R.H.'s grievance requested that Woodside immediately release him from the North Unit, refrain from "forced stripping" or "otherwise using the cutting tool to remove his clothing that he is wearing," and preserve video recordings of the April 18, 2018 incident.

133. Defendant Simons subsequently denied R.H.'s grievance.

134. On May 9, 2018, an attorney with the Office of the Juvenile defender filed an amended grievance and appeal on behalf of R.H.

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135. R.H.'s amended grievance requested his immediate release from the North Unit, the cessation of painful physical restraints, preservation of video recordings of restraints used on R.H., and "appropriate training and ongoing supervision to the involved staff members, particularly where repeated grievances from multiple sources have identified a pattern of concern with a staff member's conduct toward residents."

136. R.H.'s amended grievance complained about an unnecessary and inappropriate restraint on May 4, 2018 during which Defendant Weiner applied pressure to R.H.'s neck and dug his finger into a "pressure point" causing R.H. to "experience significant pain."

137. After the incident, R.H.'s attorney met privately with him and observed that there were no personal possessions in R.H.'s cell and that his "toilet was also clogged and was nearly overflowing with dirty brown water."

138. The amended grievance indicated that R.H's conditions of confinement were "unsuitable for an animal" and that "[p]erhaps DCF can agree that there is no justification sufficient to permit keeping a child in conditions that - if inflicted upon an animal – would constitute 'cruelty' (i.e., depriving a youth of water, confining him half-naked to a cold dark cell for four continuous days, forcing him to live with raw sewage rendering his toilet unusable for half a day, or denying him a shower and forcing him to sit with feces on his person and in his living space)."

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

140. 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.

141. 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."

142. 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.

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143. RLSIU investigated R.H.'s conditions of confinement at Woodside, the use of painful physical restraints, and Defendant Steward's interference with his right to counsel.

144. 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.

145. 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.

146. 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.

147. 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."

148. 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 B.C. while placing her in the North Unit.

149. 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.

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

151. 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

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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."

152. 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.

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

154. 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."

155. On July 5, 2018, an attorney with the Office of the Juvenile Defender filed a complaint in the Vermont Superior Court alleging that Defendants Bunnell and Piette improperly restrained and injured T.F.

156. Subsequently, RLSIU investigated an incident that occurred on June 27, 2018 during which Defendants Piette and Bunnell again restrained T.F. and injured her.

157. In particular, based on this investigation, RLSIU concluded that Defendant Bunnell's conduct violated Regulation 201 (A Residential Treatment Program shall insure children/youth the following rights: To be free from harm by caregivers or others, and from unnecessary or excessive use of restraint and seclusion/isolation); Regulation 648 (prohibition of pain inducement techniques and hyperextension of joints); and, Regulation 651 (restraint shall only be used as last resort).

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158. The report indicated that the restraint employed by Defendants Bunnell and Piette "is dangerous and out of control. Staff are seen kneeling on [T.F.'s] back, the position of her arms and wrists, twisted and lifted behind her back appear inconsistent between the staff person on her left vs. her right side. Finally, dragging her by her feet, causing injury (multiple rug burns) is not in accordance with Woodside's restraint training)."

159. Despite RLSIU's multiple findings that Woodside was mistreating children detained at that facility, 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.

160. 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.

161. 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."

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

163. 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).

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164. 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.

165. Nothing demonstrates Defendant 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.

166. "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 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.

167. 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 menstural blood, and was nearing hypothermia.

CONDITIONS OF CONFINEMENT
NATCHEZ TRACE JUVENILE ACADEMY

168. 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.

169. 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.

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

171. 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 **that** D.H. was repeatedly threatened with physical harm.

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

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

174. 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.

175. 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."

176. On 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.

177. 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.

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

179. On June 12, 2018, an attorney from the Office of the Juvenile Defender met with Defendants Gooley, and D'Amico, along with others, to discuss the out-of-state placement of children in DCF custody.

180. During the meeting, the practices of a for-profit company called Universal Health Services (UHS) were discussed.

181. UHS owned and operated Natchez Trace Youth Academy.

182. Defendants Gooley and D'Amico were informed that children sent to a UHS facility were expressing their concerns to their attorney at the Office of the Juvenile Defender about the "quality of care" they were receiving at that facility.

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183. According to the attorney from the Office of the Juvenile Defender, out-of-state programs were blocking access to her clients sent to these facilities.

184. Defendants Gooley and D'Amico were informed that "[i]f the concern comes from the youth, there is a tendency to dismiss the credibility of the youth. There is concern that DCF is not the appropriate entity to address concerns as DCF is biased given the need for placement."

185. DCF officials, including Defendants Schatz, Wolcott, Dale, Longchamp, Gooley, Harriman, 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

186. 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.

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

188. 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.

189. 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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190. Brain research, both human and animal studies, has amassed a clear picture of this process[5] and there is clear evidence that this process of brain development can be derailed by stress.

191. The effects of stress on adolescent brain development has been described in detail,[6] 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.[7]

192. There has also been a large body of research using animal models,[8] demonstrating long-term consequences of chronic unpredictable stress.

193. 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.

194. Research further demonstrates that acute stress impairs the juvenile's ability to maintain goal-directed, as opposed to emotion-driven, behavior.[9] 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.[10] These consequences – including actual morphological changes in brain structure – have been demonstrated to persist into adulthood.[11]

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[5] *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.

[6] *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.

[7] 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

[8] 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.

[9] *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.

[10] 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

[11] *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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195. 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.

196. 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."[12] 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.

197. Dr. Grassian's report has been provided to Defendants.

SOLITARY CONFINEMENT IN THE NORTH UNIT

198. Woodside managers had to approve the transfer of children detained at Woodside from the East and West Units to the North Unit.

199. This usually meant that either Defendant Simons or Defendant Steward had to approve any transfer to the North Unit.

200. In at least one instance, Defendant Cathcart, in his capacity as acting Director at Woodside approved the transfer of B.C. to the North Unit.

201. Before becoming Director of Woodside, Defendant Simons had worked at the Ethan Allen furniture factory, served in the U.S. military, and worked for the Vermont Department of Corrections.

202. Thus, Defendant Simons appears to have had no professional training and experience caring for juvenile detainees who suffered from serious mental illness or the effects of childhood trauma resulting from emotional, physical, and/or sexual abuse.

203. It is unclear whether Defendant Simons was aware of research on adolescent development that makes clear why juvenile solitary confinement is uniquely harmful.

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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.
[12] 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.

204. Likewise, before becoming Woodside's clinical director, Defendant Steward appears to have had no professional training or experience caring for juvenile detainees who suffered from serious mental illness of the effects of childhood trauma.

205. According to her resume, Defendant Steward had earned a doctoral degree in counseling psychology from SUNY Buffalo.

206. Defendant Steward's dissertation is entitled "Art Therapy Intervention with 'At-Risk' Adolescent Boys: Effects on self-image and Perceptions of Loss."

207. According to the dissertation, Defendant Steward's research subjects were former public school students who lived at home while attending an alternative school in a major metropolis in the Northeast.

208. The research subjects "arrived at the alternative school at varying times depending on what school district they were coming from, what mode of transportation they were taking, and sometimes their mood."

209. The data collected during Defendant Steward's experiment in art therapy was apparently inconclusive and she was unable to prove her original thesis.

210. The dissertation ends with this observation: "This writer is left missing the participants, hoping for them, and committing to the challenge of trying to make art therapy a part of more children's lives.

211. It is unclear whether Defendant Steward was aware of research on adolescent development that makes clear why juvenile solitary confinement is uniquely harmful.

212. Anytime a detainee was transferred to solitary confinement in the North Unit and stayed for at least seven days, DCF's deputy commissioner was required to review the placement and approve any further detention in solitary confinement.

213. In March 2018, Defendant Shea reviewed the placement of B.C. in the North Unit and approved B.C.'s further detention in solitary confinement.

214. On another occasion, in March 2018, Defendant Shea reviewed the placement of T.W. in the North Unit and approved T.W.'s further detention in solitary confinement.

215. At this point, it is unclear how many other children Defendant Shea committed to the North Unit for more than seven days.

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216. Nor is it clear whether Defendant Shea had any specialized training and experience before she started committing children to further detention in solitary confinement.

217. It is unclear whether Defendant Shea was aware of research on adolescent development that makes clear why juvenile solitary confinement is uniquely harmful.

218. It is unclear whether Defendant Cathcart had any specialized training and experience before he started committing children to detention in solitary confinement in Woodside's North Unit.

219. It is unclear whether Defendant Cathcart was aware of research on adolescent development that makes clear why juvenile solitary confinement is uniquely harmful.

220. In October 2018, an attorney from the Office of the Juvenile Defender attended a Woodside Stakeholder meeting with Defendant Steward. Defendant Steward asked the attorney to provide a detailed description of what needed to be changed at Woodside.

221. In an email dated October 24, 2018, the attorney from the Office of the Juvenile Defender informed Defendant Schatz that she had witnessed the conduct of Woodside staff members that "if perpetrated by a parent, would have likely resulted in substantiation, removal, 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 maltreatment is deeply troubling."

222. The attorney from the Office of the Juvenile Defender told Defendant Schatz that Woodside should (1) "begin utilizing a nationally-recognized de-escalation and restraint-training protocol immediately"; (2) revise its use-of-force policy immediately; and, (3) close the North Unit.

223. Defendant Schatz ignored all of these proposals.

224. While he was ignoring these proposals, it is unclear whether Defendant Schatz was aware of research on adolescent development that makes clear why juvenile solitary confinement is uniquely harmful while he was overseeing the operation of the North Unit at Woodside as DCF commissioner, or took the time to find out more about this subject after problems in the North Unit were first brought to his attention.

225. Based on his review of the documents provided to him by Plaintiffs' counsel, Dr. Grassian offered the following observations that the solitary

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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

226. 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.

227. 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.

228. 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.

229. 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.

230. 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.

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231. 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.

232. 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.

233. 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 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.

234. 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.

235. 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.

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FACTUAL BACKGROUND
D.H.

236. After 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.

237. After DCF transferred D.H. to Natchez Trace Youth Academy, 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."

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

239. 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."

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

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

242. 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.

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

244. 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.

245. 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.

246. On December 17, 2017, an attorney with the Office of the Juvenile Defender filed a grievance on behalf of D.H.

247. The grievance alleged improper placement of D.H. into solitary confinement in the North Unit.

248. In addition, the grievance indicates that the attorney from the Office of the Juvenile Defender asked Defendant Steward to reconsider her order sending D.H.

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into solitary confinement because "it was not in line with applicable policy" and that Steward denied the request.

249. The grievance requested a prompt review of Defendant Simons' and Steward's decision to send D.H. into solitary confinement in the North Unit and immediate release from the North Unit.

250. In a memo dated December 18, 2017, Defendant Simons denied the grievance.

251. In December 2017, while D.H. engaged 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.

252. 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.

253. When asked about the decision to send D.H. into solitary confinement, Defendants Simons, Cathcart, 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 if harm to self or others could be placed in a North Unit isolation cell.

254. At this point, it is impossible to catalogue every instance of the abuse D.H. at Woodside and identify which of the defendants named in this Amended Complaint participated in that abuse because Plaintiff's counsel has yet to receive a copy of D.H.'s DCF file and the video recordings of Woodside staff interactions with him.

FACTUAL BACKGROUND
R.H.

255. 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.

256. 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.

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

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

259. 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.

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

261. 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."

262. On April 18, 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.

263. Following the April 18, 2018 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.

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

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

266. 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.

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

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

269. 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.

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270. On July 6, 2018, an attorney for R.H. filed a Motion for an Emergency Protective Order in the Vermont Family Court alleging that Woodside staff improperly restrained him and transferred him to solitary confinement in the North Unit.

271. According to the motion, on April 17, 2018, while he was secluded in the North Unit, Defendants Simons, Cathcart, and Martinez entered R.H.'s cell, restrained him on the bed, and stripped the cell of all of R.H.'s belongings, including his bedding.

272. The following day, Defendants Dubuc, Martinez, Rochon, and Weiner entered R.H.'s seclusion cell, restrained him, pinned him face-down on his bed, and used a cutting tool to remove R.H.'s shirt.

273. On May 4, 2018, several male staff members surrounded R.H. and restrained him and then escorted his to a seclusion cell in the North Unit. While R.H. was pinned to the ground, Defendant Steward told R.H. that staff would take away his clothes again if he could not be safe with them.

274. During the May 4, 2018 restraint, R.H. alleged that Defendant Weiner "intentionally dug his finger into a pressure point on [R.H.'s] jaw and applied pressure to [R.H's] neck in order to cause him pain. The video shows [R.H.] yelling that Mr. Weiner is 'choking' him, but Mr. Weiner's hands are hidden from view of the camera."

275. According to the motion, between June 17, 2018 until July 5, 2018, R.H. was secluded in a North Unit cell almost continuously.

276. On July 18, 2018, R.H.'s attorney filed a Second Motion for a Protective Order.

277. This motion indicated that R.H.'s attorney had tried to resolve issues related to her client's mistreatment at Woodside, to no avail.

278. R.H.'s attorney informed Defendants Simons and Gooley that Woodside staff members had forcibly removed R.H.'s clothing, deliberately injured him, and had unlawfully secluded him.

279. In response to these complaints, Defendants Simons justified this conduct, claiming that R.H. had consented "to having his shirt cut off while being pinned face-down down on a hard [floor] by [Defendant Dubuc and others] who were literally twisting both of his arms at the time per [R.H.'s] report and video evidence."

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280. It is unclear whether Defendant Simons or Defendant Gooley ever responded to R.H.'s grievances.

281. Counsel then asked Defendants Simons and Cathcart to "pair" R.H. with staff members who were less violent. That request was ignored by Defendants Simons and Cathcart. Instead, R.H. continued to be paired with Defendant Weiner, who had assaulted him earlier in the month.

282. By refusing to help R.H., Defendants Simons and Cathcart violated their constitutional duty to protect R.H. from harm.

283. On June 29, 2018, R.H. met with counsel and requested a book to help him pass time while he was held in solitary confinement.

284. Counsel met with Defendant Steward and conveyed R.H.'s request. Overhearing this conversation, Defendant Bunnell stated R.H. might get the book he requested "if and when it was determined to be clinically indicated."

285. On July 3, 2018, Defendant Steward refused to allow R.H.'s expert witness, Paul Capcara, R.N., to meet with R.H.. Defendant Steward also refused to allow counsel to meet with her client.

286. That day, R.H. told Defendant Steward that he wanted to speak with his lawyer.

287. On July 13, 2018, Defendant Steward met R.H. in the North Unit and tried to ask him questions about the complaint his attorney filed in the Vermont Superior Court on July 6, 2018.

288. During this meeting, Defendant Steward informed R.H. that he had no chance of winning or getting moved to a different placement because he was already in a "long-term" program at Woodside.

289. R.H. believed that Defendant Steward was pressuring him to tell his attorney to dismiss the Complaint, and that if he did, he would get more privileges.

290. On July 20, 2018, R.H. was scheduled to meet with two investigators about an assault on another Woodside detainee that R.H. had witnessed.

291. After R.H. refused to meet with the investigators, Defendant Steward praised R.H. for making a "good choice."

292. On August 3, 2018, R.H. met with an investigator but refused to talk. R.H. told the investigator that he was afraid that if he talked, Defendant Steward would retaliate against him.

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293. In late July or early August 2018, Defendant Steward told R.H. not to authorize his lawyer to receive copies of R.H.'s clinical notes at Woodside.

294. In a second meeting, Defendant Steward promised to give R.H. "blue status," i.e., additional privileges, if he did not authorize the release of his clinical records to his attorney.

295. At the time, the discovery of these records was an issue in R.H.'s Vermont Superior Court case, with the Vermont Attorney General's Office informing R.H.'s attorney that DCF "opposes the release of clinical records."

296. Throughout August and September 2018, Defendants Simons and Steward pressured R.H. to dismiss his Vermont Superior Court case.

297. In September 2018, they urged R.H. to write a letter to his attorney and tell her he wanted the case dismissed.

298. Succumbing to this pressure, and believing he had no chance of prevailing, R.H. wrote the letter and his case was dismissed.

299. During the four-month period between mid-March 2018 and mid-July 2018, R.H. spent 67 days in solitary confinement in the North Unit and was subjected to an excessive number of involuntary interventions, including 47 instances of seclusion and 6 instances of restraint.

300. A number of these incidents was investigated by the Office of Residential Licensing and Special Investigations (RLSI).

301. The RLSI investigators interviewed witnesses and reviewed video recording of the incident.

302. The RLSI investigative report indicates that Defendants Dubuc, Martinez, and Weiner restrained R.H.. According to the report, R.H. indicated that Defendant Weiner grabbed R.H. by the neck and that R.H. was unable to breath.

303. The RLSI report indicates that on one occasion, Defendants Martinez, Dubuc, and Weiner, all dressed in riot gear, went into R.H.'s room and pinned his face to the floor, with his arms extended backwards.

304. At one point during the investigation, RLSI investigators told Defendant Simon that the routine use of the North Unit to isolate Woodside detainees violated RTP regulations. Defendant Simons responded "We violate that."

305. The investigators also reported that R.H. alleged that Defendant Steward interfered with his right to meet with his lawyer and the investigators believed that R.H. demonstrated real fear of retaliation for naming concerned staff members or addressing the restraints as using pain compliance."

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306. Based on their investigation into R.H.'s complaints, RLSI investigators concluded that Woodside 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 resort); 654 (restraint shall never be used for coercion, retaliation, humiliation, as a threat of punishment or form of discipline, in lieu of adequate staffing, for staff convenience, or for property damage not involving imminent danger); 660 (children in seclusion must be provided with uninterrupted supervision by qualified staff); 701 (A RTP shall be equipped to provide physical comfort of all children); and, 718 (No youth's bedroom shall be stripped of its contents and used for seclusion).

307. 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 after credible complaints about the treatment of children held at that facility had been made to Defendants Schatz, Shea, Gooley, Wolcott, Dale, and Longchamp.

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

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

310. At this point, it is impossible to catalogue every instance of the abuse R.H. at Woodside and identify which of the defendants named in this Amended Complaint participated in that abuse because Plaintiff's counsel has yet to receive a copy of R.H.'s DCF file and the video recordings of Woodside staff interactions with him.

FACTUAL BACKGROUND
T.W.

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

312. 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.

313. 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.

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314. According to these incident reports, Defendants Simons and Steward issued these unlawful orders, following requests from Defendants Cathcart Hamlin, Bunnell, Dubuc, and Scrubb.

315. According to these incident reports, Defendants Bunnell, Cathcart, Martinez, Weiner, Piette, Rochon, Hamlin, Ruggles, Hatin, Schrubb, 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, or witnessed this unlawful conduct without fulfilling their constitutional obligation to intervene or take other steps to protect T.W.

316. 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.

317. 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.

318. Specifically, RSLIU investigated the restraints employed on May 6, 2018, May 24, 2018, May 26, 2018, and June 11, 2018.

319. The Woodside Incident Report for the May 6, 2018 restraint has been provided to Defendants.

320. The Woodside Incident Report for the May 24, 2018 restraint has been provided to Defendants.

321. Photos of injuries suffered by T.W. while she was detained at Woodside have been provided to Defendants.

322. On June 11, 2018, a hearing was held in the Vermont Superior Court related to the Motion for a Protective Order filed by T.W.'s attorney on May 29, 2018.

323. During the hearing, T.W. testified that on May 24, 2018, Defendants Simons and Bunnell twisted her arms and that she heard a "pop in her arm when they were twisting it." T.W. rated the pain level related to the multiple arm twists as "8 out of 10" and "9 out of 10."

324. After T.W. returned to Woodside after the June 11, 2018 hearing, T.W. was subjected to another painful physical restraint during which she was taken down to the floor, with a staff member's knee in her back.

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325. During the restraint, a video reveals that T.W. begins to scream "you're breaking my arm" as an unidentified staff member puts her arm in a "position [that] looks visibly painful."

326. The RLSIU investigator who viewed the video indicated that it was "extremely concerning … [T.W.] is clearly in pain throughout the restraint which leads this writer to believe the restraint techniques used at Woodside are utilizing pain compliance. Given that [T.W.] is on her stomach, at points with someone's knee in her back, there are serious safety risks for injury and difficulty breathing."

327. The RSLIU report concludes with this analysis: "The first major theme of the grievances pertains to the use of restraints and the modality used. The restraint modality is not evidence-based nor a nationally recognized modality. Given [T.W.'s] pain ratings, the video evidence, the testimony of Mr. Capcara and [T.W.] herself, this restraint modality uses pain compliance. The hyperextension of joints, the crossing of the legs, the prone position, are all indicative of a law enforcement restraint model. The restraint documentation also demonstrates that Woodside is not using restraint only as a last resort. Many times, [T.W.'s] state of refusal or the disruption of other residents were reasons for the restraint. This does not show that [T.W.] or any other residents were in imminent danger. Additionally, Woodside staff do not give space to residents, but close in on them, escalating their behavior thereby creating a need for restraint. This is not a trauma-informed approach and is clearly not an effective intervention or an appropriate de-escalation plan, given [T.W.'s] trauma history."

328. On May 26, 2018. Defendants Dubuc, Cathcart, and Rochon restrained T.W. and "escorted" her to her room.

329. RLSIU investigators reviewed a video of this incident and concluded that Woodside staff members engage in conduct that only leads to escalation.

330. According to those investigators, "this is an identified theme in some of the restraint and incident reports reviewed by [an RLSIU investigator]. Woodside staff do not give space to residents but close in on them, almost escalating them into needing a restraint. This is not a trauma-informed approach and does not seem to be effective intervention or an appropriate de-escalation plan, given [T.W.'s] trauma history."

331. During this restraint, Defendant Dubuc pushed his fingers into T.W.'s left eye orbital socket, leaving a 50-cent size bruise on T.W.'s face.

332. 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 violated Regulations 201 (right to humane treatment and right to be free from excessive use of restraint and isolation); 648 (prohibition of pain inducement

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

333. 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."

334. At this point, it is impossible to catalogue every instance of the abuse T.W. at Woodside and identify which of the defendants named in this Amended Complaint participated in that abuse because Plaintiff's counsel has yet to receive a copy of T.W.'s DCF file and the video recordings of Woodside staff interactions with her.

FACTUAL BACKGROUND
G.W.

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

336. 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.

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

338. Defendants Steward gave many of the orders to restrain and seclude G.W. after receiving requests from, among others, Defendants Hatin and Bunnell.

339. According to incident reports, Defendants Simons, Hamlin, Rochon, Ruggles, Dubuc, Brice, Bunnell, Scrubb, Piette, Weiner, and Martinez either participated in, or witnessed these unlawful physical restraints.

340. By ordering or participating in these restraints, or by failing to intervene to protect G.W. during these restraints, Defendants Steward, Simons, Hamlin, Rochon, Ruggles, Dubuc, Brice, Bunnell, Scrubb, Piette, Weiner, and Martinez failed to fulfill their constitutional obligation to protect G.W. from harm.

341. In addition, on November 17, 2016, Defendant Bunnell notified Defendant Dale that G.W. was subjected to solitary confinement in the North Unit.

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342. After receiving this message, Defendant Dale did not intervene or take any other steps to protect G.W. from this abuse, and thus failed to fulfill his constitutional obligation to protect G.W. from harm.

343. 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.

344. 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."

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

346. On December 2, 2016, an attorney from the Office of the Juvenile Defender met with Defendants Simons and Shea and explained to them in great detail how G.W., who was 13 years old at the time, was being mistreated at Woodside.

347. The attorney from the Office of the Juvenile Defender told Defendants Simons and Shea that G.W. had gained so much weight while being held in solitary confinement in the North Unit that stretch marks could be seen on her skin.

348. G.W.'s basic needs, including exercise and personal hygiene, were ignored. Because the water was shut off in the cell, the toilet went unflushed and the room smelled so bad that visitors had to mask the odor with Vick's VapoRub.

349. Defendants Simons and Shea dismissed these complaints and did nothing to improve G.W.'s conditions of confinement. By doing so, Defendants Simons and Shea violated their constitution duty to protect G.W. from harm.

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

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

352. Defendant Simons signed G.W.'s seclusion orders on June 4, 2019 and June 18, 2018.

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353. In addition, G.W. was subjected to repeated physical restraints throughout the month of June 2018.

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

355. On June 4, 2019, Defendants Simons, Cathcart, Bunnell, and others are seen on a video recording entering G.W.'s isolation cell to put a smock on her.

356. In the video, Defendant Bunnell is wearing the green jacket. Weiner is wearing the green tee-shirt. Defendant Cathcart is the one wearing glasses with a checked shirt. Defendant Simon has a beard and is wearing a checked shirt. Simons tells G.W. to "take it off."

357. After the men enter G.W.'s isolation cell, G.W. says in a loud voice that she is not doing anything wrong. Defendant Simons yells "Down, down." Defendant Bunnell and another male staff member hold G.W. face-down on the bed platform. As a male staff member uses metal bars to hold G.W.'s legs in place, Bunnell and Weiner hold G.W.'s arms behind her back and up toward the ceiling. Defendant Cathcart watches as this happens, holding a smock in his hands.

358. As G.W. screams "stop, don't do this," and with Defendants Simons and Weiner holding her arms up and behind her back, Defendants Bunnell and another male staff member forcibly remove her clothes. As this is happening, G.W. sounds like she is vomiting. As Simons tells G.W. she is "fine," G.W. tells the men to let go of her. Bunnell then forcibly removes G.W.'s shirt and gives it to a male staff member who throws it out of the cell. G.W. continues to scream and says that she is unable to breath. Simons and the others then quickly leave, locking the cell door once they are all out.

359. On June 4, 2019, Defendants Simon, Cathcart, and Bunnell, along with several other staff members, surround G.W. who is on the floor at the top of a stairway.

360. The video shows that G.W. is dressed in a tee-shirt. Bunnell is wearing a green jacket. Simons has a light checked shirt on, Cathcart is wearing the dark checked shirt.

361. As G.W. screams, Bunnell turns G.W. over, and while she is face-down, Bunnell pulls her lower legs up, crosses them, and leans into her legs. G.W. screams "my knee, ow, my knee."

362. By grabbing her arms that are still behind her back, Defendants Simons and Bunnell then lifts G.W. up from the floor. As G.W. continues to scream, Simons, Cathcart, and Bunnell then carry G.W. down the stairway.

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363. When they get G.W. to the bottom of the stairs, Defendants Simons and Cathcart place handcuffs on G.W.'s wrists while her arms are still held high behind her back, as Bunnell holds her legs down.

364. Defendants Simons, Bunnell, and Cathcart then pick G.W. up by her arms and legs and carry her down the hall as she screams "my neck" and "no."

365. After arriving at a cell, Defendants Simons, Bunnell, and Cathcart lower her to the floor and drag her into it by her arms which are still cuffed and behind her back.

366. Defendant Simons then puts his knee into G.W.'s back and asks Cathcart to uncuff her as she screams in pain. Bunnell can be seen kneeling on G.W.'s legs as the cuffs are taken off.

367. A female staff member then searches G.W. and finds a small screw in her bra.

368. On June 18, 2018, Defendants Cathcart, Weiner, and several other male staff members enter G.W.'s cell, bringing with them a riot shield.

369. As G.W. lies on her bed, Defendant Weiner and one of the male staff members presses the riot shield onto her chest and face.

370. Defendant Cathcart instructs the men to roll G.W. over so that they can remove her blanket and smock.

371. G.W. yells "there's no females" as she lies on the floor with the shield pressed up against her face.

372. As G.W. lies face-down on the floor with Weiner holding her arm up behind her back, Defendant Cathcart removes the smock, as G.W. screams "stop, stop, stop."

373. Once the smock has been removed, Cathcart, Weiner, and the others retreat, leaving G.W. lying naked on the cell floor.

374. On June 20, 2019, G.W.'s attorney filed the Verified Motion for a Protective Order in the Vermont Superior Court, Chittenden Family Division that alleged that G.W. was being abused at Woodside.

375. On June 24, 2019, the Vermont Superior Court held an evidentiary hearing on the motion for a protective order.

376. During the hearing, G.W.'s expert, Dr. Christopher Bellinci testified that "Woodside had placed [G.W.] at risk of physical and psychological harm by

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repeatedly restraining her on the floor and stripping her naked, subjecting her to dangerous and painful restraint techniques, and involuntarily escorting her down a flight of stairs. Dr. Bellonci explained that the involuntary removal of clothing and forced nudity are particularly damaging to someone [like G.W.] who has been a victim of sexual assault."

377. A video from June 27, 2019 shows Defendants Simons, Cathcart, Hamlin, Rochon, Dubuc, and other staff members confronting G.W. who is standing naked by her cell door, covered in feces.

378. A federal court described what it saw on this 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.

379. On June 28, 2019, G.W.'s attorney filed a Verified Motion for an Ex Parte Protective Order in the Vermont Superior Court, Chittenden Family Division, asking the court to issue an order "restraining the Commissioner of the Department for Children and Families and his agents continuing to confine [G.W.] at Woodside and order the Commissioner and his agents to transfer [G.W.] to a hospital immediately."

380. The motion refers to an incident on June 26, 2019 during which G.W.'s safety smock, along with her blanket, were forcibly removed by Woodside staff members and that Defendants Simons and Cathcart "grappled with [G.W.] while she was naked and forced her back into her room." Shortly thereafter, Simons and Cathcart put their hands on G.W., who was naked, and " 'escorted' her involuntarily to her room."

381. On June 28, 2019, Defendants Dubuc and Martinez, along with two unidentified men dress in Tyvex suits, entered G.W.'s cell as she was lying naked on the floor.

382. Defendant Dubuc is wearing a blue shirt and shorts. Defendant Martinez is seen standing next to Dubuc.

383. The two men in the Tyvex suits then drag G.W., who is face down, along the cell floor.

384. As G.W. screams, the two men in the Tyvex suits pull G.W.'s arms behind her back, while Defendant Dubuc stands over her naked body.

385. The men are then seen retreating from the cell, leaving a still-screaming G.W. lying naked and alone on the floor as they close the feces-smeared cell door behind them.

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386. On June 9, 2019, the Essex Rescue squad was called to Woodside to deal with an emergency involving G.W.

387. The Woodside Incident Report indicates that Defendants Simons, Piette, Hatin, and Rochon either participated or witnessed what happened to G.W. on June 9, 2019.

388. Two days later, a member of the Essex Rescue squad sent an email to Defendant Simons and reported what she had witnessed:

> My name is Ashley Williams, I am an AEMT with Essex Rescue. This past Sunday, June 9 at 5:34 PM, we received a call on our non-emergency line for a 911 ambulance for a 16 year old female hitting her head against the wall. We directed the staff to call 911 and responded to the Woodside Correctional Facility. We were met outside by staff who indicated that the patient was now stating she could not move. A staff member informed me that they had been in contact with First Call that morning and had concerns that the patient was prone to self harm. He also stated that she was manipulative.
>
> When I entered her cell she was laying flat on the bed, naked except for a smock. The cell was covered with water, urine and menstrual fluid. She was soaking wet from head to toe, as was her smock. She was shivering uncontrollably and her extremities were extremely cold to the touch.
>
> We were able to take her to the hospital without incident, however upon arrival at the E.D. when the nurse from Woodside Correctional was questioned in regards to her medical and mental health history and he reported that her only mental health history was PTSD, however her list of allergies included antipsychotics which would indicate a more extensive mental health history.
>
> I am writing because I am concerned about multiple issues.
> 1) The staff were aware of self-injurious behaviors as early as that morning, why was she not in a more protected cell where she could not hurt herself.
> 2) Why was she able to lie in her own excrement and water long enough to be progressing towards hypothermia?
> 3) It is important that staff know and are able to provide adequate medical and mental health history.
> 4) Staff were aware that she had a history of manipulative behavior yet she was naked and alone with all male staffers while there were other female staffers available.
> 5) Staff need to be made aware that emergency calls need to be directed to 911.

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Obviously we were not present all day and do not know all of the details leading up to the call, however I wanted to bring these issues to your attention.

Please feel free to contact me with any other questions.

389. Defendant Simons responded to this report as follows:

Thank you for taking the time to look out for one of our kids. I have copied the Residential Licensing and Special Investigations Unit investigator in charge of regulating Woodside with your concerns. As it turns out we have an opportunity for you to come to Woodside to make a difference if you like. You can apply to a Woodside Worker B position online.

390. An investigator from RLSIU contacted the member of the Essex Recue squad who reported what she witnessed on June 9, 2019. At this time, it is unclear what happened with that investigation.

391. The Woodside Incident Reports related to the June 9, 2019 incident filed by Defendants Hatin, Piette, and Rochon do not explain why G.W. "was laying flat on the bed, naked except for a smock. The cell was covered with water, urine and menstrual fluid. She was soaking wet from head to toe, as was her smock. She was shivering uncontrollably and her extremities were extremely cold to the touch" when the EMT's from Essex Recue arrived at the scene.

392. Defendant Cathcart approved the Operations Supervisor's report of the incident which claimed that the staff's "[q]uick response and staff knowing how to utilize their skills ensured we kept the resident safe when the resident was attempting to be unsafe and self harm."

393. By June 2019, nearly six months after RLSIU had concluded that the conditions of confinement at Woodside violated numerous state regulations, and nearly three years after an attorney from the Office of the Juvenile Defender had described the inhumane conditions of confinement in the North Unit, DCF officials, including Defendants Schatz, Shea, Gooley, and Dale, and Woodside managers and clinicians, including Defendants Simons, Steward, Cathcart, Hatin, Bunnell, and Dubuc were aware that vulnerable children detained at Woodside, including G.W., were subjected to unspeakable abuse at the facility.

394. Yet none of these defendants made any serious effort to prevent the continuing abuse of children whose safety and welfare was their responsibility, thus violating their constitutional obligation to protect Woodside detainees from the abuse and horror graphically depicted in the G.W. videos from June 2019.

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395. At this point, it is impossible to catalogue every instance of the abuse G.W. at Woodside and identify which of the defendants named in this Amended Complaint participated in that abuse because Plaintiff's counsel has yet to receive a copy of G.W.'s DCF file and the video recordings of Woodside staff interactions with her.

FACTUAL BACKGROUND
T.F.

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

397. 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.

398. 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.

399. 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.

400. It is not known at this time who gave the orders to send T.F. into the North Unit or who authorized her continued placement in the North Unit after the first seven days were up.

401. However, by this time, Defendants Schatz, Shea, and Gooley were aware that children detained at Woodside were being transferred to solitary confinement in the North Unit and made no effort to stop the practice, thus violating their constitutional duty to protect those children from harm.

402. 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.

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

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

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

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

407. The RLSIU report indicates the video of this incident shows that before he restrained T.F., Defendant Bunnell was "angry, agitated, and aggressive."

408. As staff members struggled with T.F., Defendant Bunnell "is seen with his knee on [T.F.'s] back. This is in direct contradiction to Woodside's restraint training in which staff members are instructed to never place their weight on a child's back as they are restrained in the prone position due to risk of asphyxia."

409. Defendant Piette then "drags [T.F.] by her feet, across the carpeted floor and into her room, It appears Mr. Bunnell is still attempting to restrain her, and his weight is on her as she is being dragged. [T.F.] suffered friction burns from being dragged."

410. T.F. suffered significant rug burns on her body as a result of being dragged across the floor by Defendant Piette.

411. After T.F. was dragged across the floor, she was taken into a room where Defendant Bunnell punched her in the face with a closed fist.

412. T.F. later informed Defendant Steward that Defendant Bunnell had punched her in the face.

413. Even though she was a mandatory reporter, Defendant Steward did not inform the proper authorities that T.F. had told her that T.F. had been assaulted by Defendant Bunnell.

414. Following this incident, T.F. was locked away in the North Unit, where she made to sit in wet clothes on a slab with no blankets and no bedding.

415. T.F. spent the rest of July 2018 locked away in the North Unit.

416. After T.F.'s attorney had filed her Motion for a Protective Order, Defendants Steward and Bunnell pressured T.F. to dismiss her lawsuit.

417. Over the objections of T.F.'s attorney, Defendant Steward facilitated a meeting between T.F. and Bunnell, during which Bunnell tried to persuade T.F. that he did not intend to punch T.F. and that it was an accident.

418. Following this meeting, and over T.F.'s objections, Defendant Bunnell's attempts to persuade T.F. that he punched her accidently continued.

419. At some point, Defendant Bunnell entered T.F.'s North Unit cell and told her that he would not deliberately hit her because T.F. was like a daughter to him.

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420. After Defendant Steward testified at a court hearing held on Motion for a Protective Order, Defendant Steward told T.F. that if she continued to pursue her court case, T.F. would lose her relationship with Steward.

421. Defendant Steward then advised T.F. that her attorney was trying to turn T.F. against Woodside which "had been there for [T.F.] through [her] hardest times" and that T.F.'s attorney was trying to "split up" T.F.'s relationship with Steward.

422. Defendants Steward and Simons then advised T.F. to write a letter, instead of placing a call, to her attorney to inform the attorney that T.F. wanted her court case dismissed.

423. Defendants Steward and Simons told T.F. that if she called her attorney, her attorney might "say something to wrap [her] back in."

424. As a result of Defendants Steward's, Bunnell's, and Simons' pressure campaign, T.F. sent the letter to her attorney, who subsequently filed a motion to dismiss T.F.'s court case.

425. On September 25, 2018, one of DCF's attorneys, Assistant Attorney General Kate Lucier, interviewed T.F.. T.F.'s attorney was present during the interview.

426. During the interview, T.F. told AAG Lucier about Defendant Bunnell's assaultive conduct on June 27, 2018 and Defendants Steward's, Bunnell's, and Simons' campaign to pressure T.F. to dismiss the court case initiated on July 6, 2018 when her attorney filed the Motion for a Protective Order.

427. 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," 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").

428. At this point, it is impossible to catalogue every instance of the abuse T.F. at Woodside and identify which of the defendants named in this Amended Complaint participated in that abuse because Plaintiff's counsel has yet to receive a copy of T.F.'s DCF file and the video recordings of Woodside staff interactions with her.

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FACTUAL BACKGROUND
B.C.

429. 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.

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

431. 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.

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

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

434. On August 14, 2017, an attorney with the Office of the Juvenile Defender filed a grievance with Defendant Simons on behalf of Plaintiff B.C.

435. The grievance complained that B.C. suffered a sprained ankle while being restrained by two male Woodside staff members on July 29, 2017.

436. On August 17, 2017, an attorney with the Office of the Juvenile Defender filed a second grievance with Defendant Gooley on behalf of Plaintiff B.C.

437. The grievance indicated that because Defendant Simons improperly restrained on August 13, 2017, the attorney asked Defendant Gooley to review both the original grievance related to the July 29, 2017 restraint and the second restraint involving Defendant Simons.

438. On August 6, 2018, B.C. was restrained when unidentified staff members took her blankets away.

439. Several weeks later, 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.

440. Defendants Simons and Steward ordered Defendant Hatin to enter B.C.'s isolation cell and remove her clothing.

441. This incident was captured on a video/audio recording.

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442. The video provides a harrowing account of B.C.'s treatment at the hands of Defendants Hatin and Ruggles as B.C.'s primal screams can be heard throughout the recording.

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

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

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

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

447. Defendant D'Amico witnessed B.C. pants-less on day two after the forcible removal of her clothing on 8/25/18. D'Amico made it known to many people, including Defendants Simons and Shea, how horrible and inhumane she thought that was.

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

449. 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" and that the restraint "occurred without any visible imminent risk of harm to self or others."

450. 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."

451. 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").

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452. By late August 2018, B.C. had been confined to a seclusion cell in the North Unit for about a month.

453. It is not known at this time who ordered B.C.'s transfer to solitary confinement in the North Unit or who reviewed and approved further confinement after B.C. had spent her first seven days in the North Unit.

454. However, by this time, Defendants Schatz, Shea, and Gooley were aware that children detained at Woodside were being transferred to solitary confinement in the North Unit and made no effort to stop the practice, thus violating their constitutional duty to protect those children from harm.

455. While B.C. was confined to her cell in the North Unit, she was forced to shower naked in front of staff, could not wear any clothing, and could not have books, paper, or writing implements.

456. In August 2018, B.C. continued to have no access to group programming, education, or recreation at Woodside.

457. On August 23, 2018, B.C.'s attorney filed a motion in the Vermont Family Court requesting reconsideration of a court order denying a request for a protective order that would have required DCF to secure an appropriate alternative placement for B.C. by a date certain.

458. The motion alleged that "Woodside has restrained [B.C.] by pinning her face-down against the floor or a wall, pulling her arms behind her back, and twisting her arms."

459. It is not known at this time which Woodside staff members engaged in this conduct.

460. Counsel attached an affidavit prepared by Heather Lynch, a licensed psychologist who was familiar with the conditions of B.C.'s confinement at Woodside.

461. In her affidavit, Lynch reported that "[B.C.'s] current placement is not meeting her needs for treatment and comfort ... [and that] [m]aintaining [B.C.] in deprived conditions and not providing her with appropriate treatment accommodations is detrimental to [B.C.'s] ability to heal."

462. At this point, it is impossible to catalogue every instance of the abuse B.C. at Woodside and identify which of the defendants named in this Amended Complaint participated in that abuse because Plaintiff's counsel has yet to receive a copy of B.C.'s DCF file and the video recordings of Woodside staff interactions with her.

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FACTUAL BACKGROUND
A.L.

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

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

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

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

467. Defendant Steward approved Defendant Hamlin's request to restrain A.L.

468. The reports related to this incident do not explain how A.L. suffered the "rug burn" on his right shoulder or why he complained about a sore right elbow.

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

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

471. 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.

472. On May 2, 2018, an attorney with the Office of the Juvenile Defender submitted a grievance on behalf of A.L. to Defendant Simons objecting to A.L.'s transfer to a seclusion cell in the North Unit.

473. 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.

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

475. 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."

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

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

478. 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).

479. RTPRI investigators interviewed Todd Fountain of JKM Training.

480. 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.

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

482. 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."

483. 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."

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

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

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486. 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.

487. 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").

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

489. 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."

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

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

492. At this point, it is impossible to catalogue every instance of the abuse A.L. at Woodside and identify which of the defendants named in this Amended Complaint participated in that abuse because Plaintiff's counsel has yet to receive a copy of A.L.'s DCF file and the video recordings of Woodside staff interactions with him.

CAUSES OF ACTION

COUNT ONE

Violations of the Eighth Amendment's ban on cruel and unusual punishment

493. Plaintiffs repeat and incorporate herein paragraphs 1 through 573.

494. At all times material hereto, Defendants Schatz, Shea, Gooley, Wolcott, Simons, Steward, Bunnell, Cathcart, Dubuc, Scrubb, Hatin, Weiner, Martinez, Ruggles, Piette, Rochon, Dale, D'Amico, Hamlin, and Brice were acting under color of state law.

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