

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

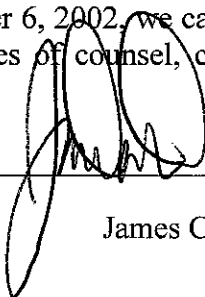
Hargett, et al.,)	
)	No. 02 C 1456
Plaintiff,)	
v.)	Judge Leinenweber
)	
Baker, et al.,)	
)	
Defendants.)	

DOCKETED
SEP 09 2002

NOTICE OF FILING

To: ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that on September 6, 2002, we caused to be filed, Defendants' Answer and Affirmative Defenses and appearances of counsel, copies of which are attached hereto and herewith served upon you.



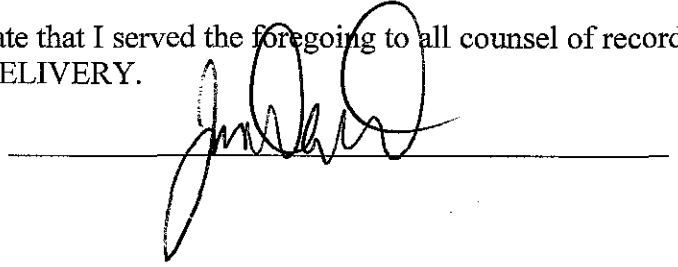
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FILED
SEP 09 2002
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

Certificate of Service

I, James C. Vlahakis, an attorney, state that I served the foregoing to all counsel of record on September 6, 2002, via MESSENGER DELIVERY.



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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JEFFERY HARGETT; KIM A. OVERLIN;
JIMMIE SMITH; LOREN A. WALKER;
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

LINDA BAKER, Secretary of the Illinois
Department of Human Services, MARY
BASS, Head Facility Administrator for the
Illinois Department of Human Services,
TIMOTHY BUDZ, Facility Director of the
Sexually Violent Persons Unit at the Joliet
Correctional Center, RAYMOND WOODS,
Clinical Director, and TRAVIS HINZE,
Associate Clinical Director,

Defendants.

No. 02 C 1456

Judge Leinenweber

DOCKETED
SEP 03 2002

FILED
SEP 06 2002
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

ANSWER AND AFFIRMATIVE DEFENSES
TO CLASS ACTION COMPLAINT

Defendants, LINDA BAKER, MARY BASS, TIMOTHY BUDZ and RAYMOND
WOOD, by and through their undersigned counsel, submit the following as their Answer and
Affirmative Defenses to Plaintiffs' Class Action Complaint:

INTRODUCTION

1. This complaint asserts a civil rights action pursuant to Title 42 of the United
States Code, § 1983 for declaratory and injunctive relief to redress violations of the United States
Constitution in connection with the complete and utter failure of the Defendants or those acting
under their control or direction to provide adequate and meaningful mental health treatment to
the named Plaintiffs and all others similarly situated that have been involuntarily detained by the
Illinois Department of Human Services ("DHS") pursuant to the Sexually Violent Persons

Commitment Act, 725 ILCS 207/1 et al. (the "SVP Act"). The avowed purposed of the SVP Act is to provide mental health treatment and care to individuals in the custody of DHS in the least restrictive manner consistent with the person's needs and in accordance with the court's commitment order. The treatment and care provided by the Defendants to the Plaintiffs and all others similarly situated is punitive and constitutionally inadequate.

ANSWER: Defendants object to the compound nature of this paragraph which violates Fed.R.Civ.P. 10(b). Without waiving this objections, Defendants admit that the "complaint asserts a civil rights action pursuant to Title 42 of the United States Code, § 1983 for declaratory and injunctive relief to redress violations of the United States Constitution" and that Plaintiffs contend that Defendants, or those acting under their control or direction, have failed to "provide adequate and meaningful mental health treatment to the named Plaintiffs and all others similarly situated that have been involuntarily detained by" DHS pursuant to the SVP Act. Defendants admit that Plaintiffs allege a Section 1983 cause of action as set forth in the first sentence of paragraph 1 but deny the remaining allegations of sentence 1. Defendants deny that the second sentence of paragraph 1 accurately sets forth the purpose of the SVP Act and further deny that Plaintiffs or any similarly situated individuals have statutory or constitutional right to be treated and housed in "the least restrictive manner" as alleged above. Defendants deny the third sentence of paragraph 3. Defendants further state that the SVP facility provides sex offender and related treatment, and by statute is not under the Mental Health Code nor is it considered a mental health facility.

JURISDICTION

2. The Court has jurisdiction over this action under Title 28 of the United States Code, § 1331 and § 1343.

ANSWER: Defendants admit the allegations of paragraph 2.

PARTIES

3. Plaintiff Jeffery Hargett was involuntarily civilly committed pursuant to the Act in or about March, 2000 by the Circuit Court of Iroquois County, Illinois. Mr. Hargett has consented to participate in any and all mental health treatment programs provided by DHS. Mr.

Hargett has never refused treatment or to participate in any test administered by the Defendants. Nevertheless, due to the systemic deficiencies in the SVP program described below, Mr. Hargett has never received adequate treatment or treatment that might yield a realistic chance for his release.

ANSWER: Defendants admit the first sentence of paragraph 3 and admit that Plaintiff Hargett has generally consented to participate in sex offender treatment programs but deny that he has fully participated in all treatment programs offered by Department of Humans Services' treatment program and further deny that he has never refused treatment or to fully participate in any test administered by Department of Humans Services' treatment program. Defendants deny that there are any deficiencies in the sex offender treatment program and deny that Plaintiff Hargett has not been offered adequate treatment and/or treatment that might yield a realistic chance for his release.

4. Plaintiff Kim A. Overlin ("Overlin") was involuntarily civilly committed pursuant to the Act in or about June, 1998 by the Circuit Court of Macon County, Illinois. Mr. Overlin has consented to participate in any and all mental health treatment programs provided by DHS. Mr. Overlin has never refused treatment or to participate in any test administered by the Defendants. Nevertheless, due to the systemic deficiencies in the SVP program described below, Mr. Overlin has never received adequate treatment or treatment that would lead to a realistic chance for his release.

ANSWER: Defendants admit the first sentence of paragraph 4 and admit that Plaintiff Overlin has generally consented to participate in sex offender treatment programs but deny that he has fully participated in all treatment programs offered by Department of Humans Services' treatment program and further deny that he has never refused treatment or to fully participate in any test administered by Department of Humans Services' treatment program. Defendants deny that there are any deficiencies in the treatment program and deny that Plaintiff Overlin has not been offered adequate sex offender treatment and/or treatment that might yield a realistic chance for his release.

5. Plaintiff Jimmie Smith ("Smith") was involuntarily civilly committed pursuant to the Act in or about October, 2000 by the Circuit Court of Macoupin County, Illinois. Mr. Smith has consented to participate in any and all mental health treatment programs provided by DHS. Mr. Smith has never refused treatment or to participate in any test administered by the Defendants. Nevertheless, due to the systematic deficiencies in the SVP program described below, Mr. Smith has been denied adequate treatment or treatment that would lead to a realistic chance for his release.

ANSWER: Defendants admit the first sentence of paragraph 5 and admit that Plaintiff Smith has generally consented to participate in sex offender treatment programs but deny that he has fully participated in all treatment programs offered by Department of Humans Services' treatment program and further deny that he has never refused treatment or to fully participate in any test administered by Department of Humans Services' treatment program. Defendants deny that there are any deficiencies in the treatment program and deny that Plaintiff Smith has not been offered adequate sex offender treatment and/or treatment that might yield a realistic chance for his release.

6. Plaintiff Loren K. Walker ("Walker") was involuntarily civilly committed pursuant to the Act in or about September, 1998 by the Circuit Court of Madison County, Illinois. Mr. Walker has consented to participate in any and all mental health treatment programs provided by DHS. Mr. Walker has never refused treatment or to participate in any test administered by the Defendants. Nonetheless, due to the systemic deficiencies in the SVP program described below, Mr. Walker has been denied adequate treatment or treatment that would lead to a realistic chance for his release.

ANSWER: Defendants admit the first sentence of paragraph 6 and admit that Plaintiff Walker has generally consented to participate in sex offender treatment programs but deny that he has never refused treatment or to fully participate in any test administered by Department of Humans Services' treatment program. Defendants deny that there are any deficiencies in the treatment program and deny that Plaintiff Walker has not been offered

adequate sex offender treatment and/or treatment that might yield a realistic chance for his release.

7. Defendant Linda R. Baker ("Baker"), is the Secretary of the Illinois Department of Human Services ("DHS") and the chief administrative officer of the DHS. Defendant Baker is sued herein in her official capacity. At all relevant times, she was acting under the color of state law.

ANSWER: Defendant Baker admits the allegations contained in paragraph 7 but denies that these allegations establish her personal responsibility for the complained of acts or omissions. The remaining Defendants make no response as this allegation is directed solely at Defendant Baker. To the extent required, the remaining Defendants admit that Defendant Baker has been sued in her official capacity and that at all relevant times she was acting under color of state law.

8. Defendant Mary Bass ("Bass") is the Head Facility Administrator of DHS. She is sued herein in her official capacity. At all relevant times, she was acting under the color of state law.

ANSWER: Defendant Bass denies the first sentence of paragraph 8. Defendant Bass, however, admits that she is the Community Services Director of the SVP program and denies that these allegations or that her position establish her personal responsibility for the complained of acts or omissions. The remaining Defendants make no response as this allegation is directed solely at Defendant Bass. To the extent required, the remaining Defendants admit that Defendant Bass has been sued in her official capacity and that at all relevant times she was acting under color of state law.

9. Defendant Timothy Budz ("Budz") is the Facility Director of the DHS Sexually Violent Persons Unit at Joliet. He is sued herein in his official capacity. At all relevant times, he was acting under the color of state law.

ANSWER: Defendant Budz admits the allegations contained in paragraph 9 but denies that these allegations establish his personal responsibility for the complained of acts or omissions. The remaining Defendants make no response as this allegation is directed solely at Defendant Budz. To the extent required, the remaining Defendants admit that Defendant Budz has

been sued in his official capacity and that at all relevant times he was acting under color of state law.

10. Defendant Raymond Woods ("Woods") is the Clinical Director of the DHS Sexually Violent Persons Unit at Joliet. He is sued herein in his official capacity. At all relevant times, he was acting under the color of state law.

ANSWER: Defendant Wood admits the allegations contained in paragraph 10 but denies that these allegations establish his personal responsibility for the complained of acts or omissions. The remaining Defendants make no response as this allegation is directed solely at Defendant Wood. To the extent required, the remaining Defendants admit that Defendant Wood has been sued in his official capacity and that at all relevant times he was acting under color of state law.

ANSWER:

11. Defendant Travis Hinze ("Hinze") is the Associate Clinical Director of the DHS Sexually Violent Persons Unit at Joliet. He is sued herein in his official capacity. At all relevant times, he was acting under the color of state law.

ANSWER: Defendants admit that Defendant Hinze was employed as described above but state that he is no longer employed by the treatment program. To the extent required, the remaining Defendants admit that he has been sued in his official capacity and that at all relevant times he was acting under color of state law. Defendants further state these allegations fail to establish Dr. Hinze's personal responsibility for the complained of acts or omissions.

12. Baker, Bass, Budz, Woods and Hinze (the "Defendants"), pursuant to authority vested in them by the State of Illinois (the "State"), are the individuals primarily responsible for the care, custody, treatment and control of the Plaintiffs and all others similarly situated. The Defendants knowingly and with deliberate indifference established and maintained the treatment policies, procedures and regime that are challenged in this action.

ANSWER: Defendants admit that Defendant Budz is responsible for day-to-day operations of the SVP facility and that Defendant Wood is responsible for oversight of sex offender treatment. Defendants deny the remaining allegations.

BACKGROUND

13. The SVP Act provides for the civil commitment into the custody of DHS of persons that: (a) have been convicted, or acquitted by reason of insanity, of certain sexual offenses; and (b) have been found to have a mental disorder that creates a substantial possibility that they will engage in future acts of sexual violence. Persons may be detained by DHS pursuant to the SVP Act prior to a civil commitment proceeding if there is probable cause to believe that conditions (a) and (b) above are met.

ANSWER: Defendants deny that Plaintiffs have adequately paraphrased the SVP Act and further state that the Act speaks for itself.

14. Although the SVP Act's stated purpose is not to punish, but instead is to provide for the segregation and treatment of persons with a dangerous mental disorder. Plaintiffs in fact have not received adequate treatment and have been confined in punitive conditions that are not rationally related to the purposes of the SVP Act.

ANSWER: Defendants deny that Plaintiffs have adequately paraphrased the SVP Act and further state that the Act speaks for itself. Defendants deny the remaining allegations of paragraph 14.

15. This action challenges under the Due Process Clause of the Fourteenth Amendment the punitive conditions and the inadequate treatment received by the Plaintiffs and all others similarly situated. Specifically, this action challenges the decision of the Defendants to warehouse and put out of sight the Plaintiffs and all others similarly situated in an attempt to hold them indefinitely and to punish, rather than treat their perceived mental disabilities.

ANSWER: Defendants deny the conclusory allegations contained paragraph 15 but admit that this action challenges, via the Due Process Clause of the Fourteenth Amendment, the conditions of confinement and sex offender treatment provided to Plaintiffs.

CLASS ALLEGATIONS

16. This case is brought on behalf of a class that consists of all persons who have been, are or will be committed under the SVP Act and placed in the custody of DHS.

ANSWER: Defendants admit that this action is brought on behalf of a class that consists of all persons who are or will be committed under the SVP Act and placed in the custody of DHS. The class does not consist of individuals who are detainees not committed to the program and/or committed individuals who are on conditional release to the community.

17. The class is so numerous that joinder of all members is impracticable. The population in the custody of DHS exceeds 150 individuals and is constantly growing larger as new persons are detained and civilly committed under the SVP Act.

ANSWER: Defendants admit the allegations contained in paragraph 17 but deny that the population is “*constantly* growing larger” (emphasis supplied).

18. There are questions of law and fact common to the members of the class, and these questions predominate over those affecting only individual class members. The predominate common question is whether the mental health treatment and care provided by the Defendants or those acting under their control or direction comports with the requirements of the Due Process Clause of the United States Constitution.

ANSWER: Defendants deny the conclusory allegations contained in paragraph 18 but admit that the Court has certified a class.

19. Plaintiffs' claims are typical of the claims of the class members. All are based on the same factual and legal theories in that they have all suffered as a result of the unconstitutional practices alleged in this Complaint.

ANSWER: Defendants deny the conclusory allegations contained in paragraph 19 but admit that the Court has certified a class.

20. Plaintiffs will fairly and adequately represent the members of the class. They have no interests antagonistic to the class, and they are represented by counsel who are competent and experienced in civil rights litigation.

ANSWER: Defendants admit that counsel are experience in class action lawsuits but state that they are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

21. A class action is superior for the fair and efficient adjudication of this matter, in that the Defendants, by creating and maintaining the practices alleged in this complaint, have acted on grounds generally applicable to the class, and, as a result, declaratory and injunctive relief with respect to the entire class is appropriate.

ANSWER: Defendants admit that a class is certified but deny the remaining allegations contained in paragraph 21.

DUE PROCESS VIOLATIONS

22. Defendants, in their official capacities, are collectively responsible for the policies an procedures controlling the manner and method of Plaintiffs' confinement and manner and method of their mental health treatment.

ANSWER: Defendants admit that Defendant Budz is responsible for day-to-day operations of the SVP facility and that Defendant Wood is responsible for oversight of sex offender treatment. Defendant Baker authorizes program directives. Defendants deny the remaining allegations.

23. The Fourteenth Amendment Due Process Clause requires states to provide civilly committed persons with access to mental health treatment that is at least minimally adequate and gives them a realistic opportunity for their conditions to improve so that they can be released. Further, because the Plaintiffs and others similarly situated are not prisoners, they are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish.

ANSWER: Objection, this allegation is in the nature of legal argument which does not adequately state the applicable law. Without waiving this objection, Defendants admit that Plaintiffs are civil detainees. Defendants deny that the of sex offender treatment and the conditions of confinement are constitutionally inadequate based on their status. Defendants deny the remaining allegations.

24. The Plaintiffs and all others similarly situated are being denied meaningful mental health care treatment that gives them a realistic opportunity for their conditions materially to improve because, among other things, the Defendants have failed:

- (a) To properly train staff regarding the treatment of sexual deviance;
- (b) To provide a coherent and meaningful individualized treatment program for each detainee with understandable goals and a road map showing steps necessary for improvement and release;
- (c) To make adequate provisions for the participation of detainees' family members in rehabilitation efforts, including permitting family visits with reasonable frequency and allowing prompt telephone access to detainees in cases of family emergency;
- (d) To draft and implement fair and reasonable grievance procedures and behavior management plans;
- (e) To afford reasonable opportunities to all residents for educational, religious, vocational and recreational activities;
- (f) To cease requiring, as a precondition to participation in all but the most basic treatment offered by DHS, and therefore, as a predicate to release, that the Plaintiffs and all other similarly situated detainees to admit to a laundry list of real and imagined crimes for which they were not convicted, and thereby place themselves in jeopardy of future criminal

prosecution for other crimes in violation of the Plaintiffs' Fifth [sic] right against self-incrimination applied to the states by the Fourteenth Amendment; and

- (g) To institute a procedure to guarantee appropriate therapist/patient confidentiality.

ANSWER: Defendants deny the allegations of paragraph 24 and all of its subparts.

25. The aforesaid failure to provide constitutionally adequate treatment is a substantial departure from accepted professional judgment, practice or standards and demonstrates that the Defendants did not base their decisions on such professional judgment.

ANSWER: Defendants deny the allegations of paragraph 25.

26. Instead of providing treatment and conditions that are rationally related to the purposes of Plaintiffs' confinement, Defendants are using the SVP program as a means of warehousing and punishing those in the SVP program. Since this program was initiated over four years ago, no more than a handful of detainees have been permitted to successfully complete the Defendants' treatment program to the point where the Defendants recommended their discharge to the courts. Defendants erect one arbitrary barrier after another to prevent Plaintiffs from progressing to the point where the SVP program will recommend their release, including requiring participants in the program to confess to crimes which they did not commit.

ANSWER: Defendants deny the allegations of paragraph 26.

27. The Plaintiffs and all others similarly situated are being held in conditions that are more restrictive than the conditions under which the Plaintiffs were confined when they were incarcerated as criminals prior to their civil commitment under the Act. These conditions are unrelated to the security or treatment needs of the SVP population and are purely punitive in nature. Further, the Plaintiffs and all others similarly situated are arbitrarily confined in

conditions that are more restrictive than the conditions under which most convicted felons are confined by the Illinois Department of Corrections in that, among other things, the Plaintiffs:

- (a) Are routinely stripped searched before and after every visit, including visits with attorneys;
- (b) Are routinely shackled with restraints normally used for the transportation of prisoners housed in "super-max" facilities;
- (c) Are subjected to intrusive cell searches, often with little or no justification, with greater frequency than those of prisoners;
- (d) Have their freedom of movement restricted in a variety of arbitrary ways; for example, they are not allowed to go to the commissary by themselves;
- (e) Are not allowed to purchase their own razor, stapler, nail clippers, aspirins or other similar over-the-counter medication, vitamins or eye drops; and
- (f) Are constantly surveilled by DHS as a result of the installation of intercom systems in the Plaintiffs' cells.

ANSWER: Defendants deny the allegations of paragraph 27 and all of its subparts with the exception that they admit that Plaintiffs and others similarly situated have been routinely strip searched before and after visits for security reasons and that Plaintiffs and others similarly situated may have been required to purchase DHS issued razors, staplers, nail clippers, aspirins, vitamins and/or eye drops.

CLAIM FOR RELIEF

28. The aforesaid conditions are not rationally connected to furthering the constitutionally legitimate purpose of the Act, which is to provide for the segregation and treatment of the Plaintiffs because of their alleged mental disorder, and are excessive in relation to that purpose, in violation of the Due Process Clause of the Fourteenth Amendment.

ANSWER: Defendants deny the allegations of paragraph 28.

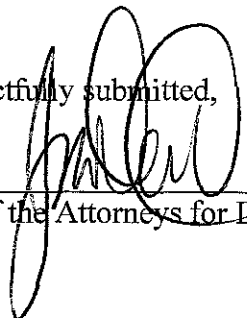
29. As a direct and proximate result of the conduct of the Defendants, the Plaintiffs have suffered and continue to suffer distress, humiliation, pain and a loss of liberty. The Defendants' practices and policies described above violate Plaintiffs' rights to reasonable mental

health care and constitute punishment in violation of the Due Process Clause of the Fourteenth Amendment. Plaintiffs have been and continue to be irreparably harmed by these injuries and they have no adequate remedy at law for the Defendants' unlawful conduct.

ANSWER: Defendants deny the allegations of paragraph 29.

WHEREFORE, Defendants, LINDA BAKER, MARY BASS, TIMOTHY BUDZ and RAYMOND WOOD, submit that Plaintiffs and the class are not entitled to any of the relief they demand

Respectfully submitted,

By:  _____
One of the Attorneys for Defendants

AFFIRMATIVE DEFENSES

1. Plaintiffs and the class do not have a constitutional entitlement to the level of sex offender treatment they demand.
2. Defendants and their employees have not violated the professional judgment standard in providing sex offender treatment to Plaintiffs and the class.
3. Plaintiffs and the class do not have a constitutional right to vocational training and/or education while being civilly detained.
4. Plaintiffs and the class have never been punished in violation of the Fourteenth Amendment.
5. By statute, the provisions of the Mental Health Code do not apply nor is the Joliet facility considered a mental health facility under Illinois law.
6. Plaintiffs and the class have not suffered any adverse harm as a result of any act or omission taken by any Defendant or employees.
7. Plaintiffs have failed to allege the requisite level of personal responsibility against the Defendants as required by 42 U.S.C. § 1983.
9. Plaintiffs, with the exception of Loren Walker, lack standing to attack the sex offender treatment program because they has not fully consented and/or fully participated in sex offender treatment.
10. Plaintiffs have not been deprived of their right to practice the religion of their choice as it relates to the allegations of their complaint.
11. Plaintiffs and the class do not have a constitutional right of privacy in the Joliet facility.
12. Plaintiffs do not have a constitutional right to have their family members participate in sex offender treatment.

13. Plaintiffs do not have a constitutional right to have “freedom of movement” at the Joliet facility.

14. Plaintiffs do not have a constitutional right to be maintained in the least restrictive manner as alleged in their complaint.

15. Plaintiffs do not have a constitutional right to be free of the security measures complained of in their complaint.

16. Plaintiffs do not have a constitutional right to purchase their own razor, stapler, nail clippers, aspirins or other similar over-the-counter medication, vitamins or eye drops, as opposed to being required to purchase DHS approved and/or offered items.

17. Plaintiffs do not have a constitutional right to be free from room searches.

18. Plaintiffs do not have a constitutional right to be free from strip searches.

19. Plaintiffs have not been deprived of a coherent and meaningful sex offender treatment.

20. The sex offender treatment staff is not inadequately trained.

21. Plaintiffs and the class are not in jeopardy of future criminal prosecution for other crimes in violation of the Fifth Amendment.

22. Adequate confidentiality protections are used in the sex offender treatment program.

23. Defendants have drafted and employed fair and reasonable grievance procedures and behavior management plans.

13. Plaintiffs do not have a constitutional right to have “freedom of movement” at the Joliet facility.

14. Plaintiffs do not have a constitutional right to be maintained in the least restrictive manner as alleged in their complaint.

15. Plaintiffs do not have a constitutional right to be free of the security measures complained of in their complaint.

16. Plaintiffs do not have a constitutional right to purchase their own razor, stapler, nail clippers, aspirins or other similar over-the-counter medication, vitamins or eye drops, as opposed to being required to purchase DHS approved and/or offered items.

17. Plaintiffs do not have a constitutional right to be free from room searches.

18. Plaintiffs do not have a constitutional right to be free from strip searches.

19. Plaintiffs have not been deprived of a coherent and meaningful sex offender treatment.

20. The sex offender treatment staff is not inadequately trained.

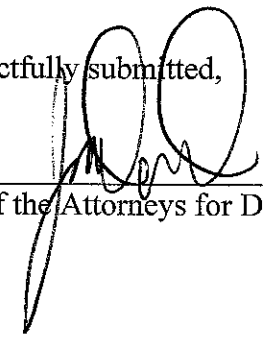
21. Plaintiffs and the class are not in jeopardy of future criminal prosecution for other crimes in violation of the Fifth Amendment.

22. Adequate confidentiality protections are used in the sex offender treatment program.

23. Defendants have drafted and employed fair and reasonable grievance procedures and behavior management plans.

WHEREFORE, for the reasons set forth above, Defendants, LINDA BAKER, MARY BASS, TIMOTHY BUDZ and RAYMOND WOOD, respectfully request that this Court enter judgment in their favor and against the Plaintiffs and the class.

Respectfully submitted,

By:  _____
One of the Attorneys for Defendants

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