

**U.S. District Court
District of Montana (Butte)
CIVIL DOCKET FOR CASE #: 2:15-cv-00022-DWM**

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Disability Rights Montana v. Batista et al
Assigned to: Judge Donald W. Molloy
Case in other court: 9th Circuit, 15-35770
Cause: 42:1983 Civil Rights Act

Date Filed: 05/15/2015
Jury Demand: None
Nature of Suit: 555 Prisoner
Petitions (Prison Condition)
Jurisdiction: Federal Question

Plaintiff

Disability Rights Montana
*Inc., on behalf of all prisoners with
serious mental illness confined to
the Montana State Prison*

represented by **Adrian Ann Miller**
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V.

Defendant

Reginald Michael

*in his official capacity as Director of
the Montana Department of
Corrections*

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Defendant

Lynn Guyer
*in his official capacity as warden of
Montana State Prison*

represented by **William L. Crowley**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Colleen E. Ambrose
(See above for address)
ATTORNEY TO BE NOTICED

Mary Cile Glover Rogers
(See above for address)
TERMINATED: 05/08/2017

Natasha Prinzing Jones
(See above for address)
ATTORNEY TO BE NOTICED

Thomas J. Leonard
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Date Filed	#	Docket Text
05/15/2015	<u>1</u>	COMPLAINT against Mike Batista, Leroy Kirkegard, filed by Disability Rights Montana. (Attachments: # <u>1</u> Civil Cover Sheet) (ELL,) (Entered: 05/15/2015)

05/15/2015	<u>2</u>	Summons Issued as to Mike Batista, Leroy Kirkegard. Originals mailed to cnsl for service. (ELL,) (Entered: 05/15/2015)
05/15/2015		Filing fee: \$ 400.00, receipt number 0977-1588328 (ELL,) (Entered: 05/15/2015)
05/15/2015	<u>3</u>	Corporate Disclosure Statement by Disability Rights Montana. (ELL,) (Entered: 05/15/2015)
05/18/2015	<u>4</u>	JOINT DISCOVERY PLAN by Disability Rights Montana. (Ellingson, Jon) (Entered: 05/18/2015)
05/20/2015	<u>5</u>	Order Setting: motions to dismiss complaint filed by 6/5/2015, response filed by 7/3/2015, and reply filed by 7/24/15. All other pretrial deadlines will be set by further order of the court. Signed by Judge Sam E Haddon on 5/20/2015. (DED,) (Entered: 05/20/2015)
05/20/2015	<u>6</u>	NOTICE of Appearance by William L. Crowley on behalf of Mike Batista, Leroy Kirkegard (Crowley, William) (Entered: 05/20/2015)
05/20/2015	<u>7</u>	NOTICE of Appearance by Thomas J. Leonard on behalf of Mike Batista, Leroy Kirkegard (Leonard, Thomas) (Entered: 05/20/2015)
05/20/2015	<u>8</u>	NOTICE of Appearance by Mary Cile Glover Rogers on behalf of Mike Batista, Leroy Kirkegard (Glover Rogers, Mary) (Entered: 05/20/2015)
06/01/2015	<u>9</u>	NOTICE of Appearance by Colleen E. Ambrose on behalf of All Defendants (Ambrose, Colleen) (Entered: 06/01/2015)
06/05/2015	<u>10</u>	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM Mary Cile Glover Rogers appearing for Defendants Mike Batista, Leroy Kirkegard (Glover Rogers, Mary) Modified on 8/19/2015 Martin-Lake Asso to report for hearing (DED,). (Entered: 06/05/2015)
06/05/2015	<u>11</u>	Brief/Memorandum in Support re <u>10</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Mike Batista, Leroy Kirkegard. (Glover Rogers, Mary) (Entered: 06/05/2015)
06/23/2015	<u>12</u>	MOTION Jeffrey A. Simmons to Appear Pro Hac Vice (Filing fee \$ 250 receipt number MTX900008510.) Jon E. Ellingson appearing for Plaintiff Disability Rights Montana (Attachments: # <u>1</u> Affidavit, # <u>2</u> Text of Proposed Order) (Ellingson, Jon) (Entered: 06/23/2015)
06/23/2015	<u>13</u>	MOTION Mathew D. Lee to Appear Pro Hac Vice (Filing fee \$ 250 receipt number MTX900008510.) Jon E. Ellingson appearing

		for Plaintiff Disability Rights Montana (Attachments: # 1 Affidavit, # 2 Text of Proposed Order) (Ellingson, Jon) (Entered: 06/23/2015)
06/24/2015	14	ORDER granting 12 Motion to Appear Pro Hac Vice for Attorney Jeffrey A. Simmons for Disability Rights Montana. Signed by Judge Sam E Haddon on 6/24/2015. (ELL,) (Entered: 06/24/2015)
06/24/2015	15	ORDER granting 13 Motion to Appear Pro Hac Vice for atty Mathew D. Lee. Signed by Judge Sam E Haddon on 6/24/2015. (ELL,) Modified on 6/24/2015 Cpy of Afdt sent to TO in GF for input into CM/ECF (ELL,). (Entered: 06/24/2015)
06/24/2015	16	Letter to cnsl Lee re ECF Registration with copy of Order Granting PHV. (ELL,) (Entered: 06/24/2015)
07/02/2015	17	RESPONSE to Motion re 10 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Disability Rights Montana. (Simmons, Jeffrey) (Entered: 07/02/2015)
07/02/2015	18	AFFIDAVIT in Opposition re 10 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>Declaration of Jeffrey A. Simmons</i> filed by Disability Rights Montana. (Attachments: # 1 Exhibit Demand Letter) (Simmons, Jeffrey) (Entered: 07/02/2015)
07/16/2015	19	NOTICE of Acknowledgment of Pro Hac Vice Order by Disability Rights Montana (Simmons, Jeffrey) (Entered: 07/16/2015)
07/16/2015	20	NOTICE of Acknowledgment of Pro Hac Vice Order by Disability Rights Montana (Lee, Matthew) (Entered: 07/16/2015)
07/24/2015	21	REPLY to Response to Motion re 10 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Mike Batista, Leroy Kirkegard. (Glover Rogers, Mary) (Entered: 07/24/2015)
08/19/2015	22	ORDER Setting Hearing on Motion 10 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM : Contract Court Reporter is Needed , Motion Hearing set for 9/3/2015 at 10:00 AM in Helena, MT before Judge Sam E Haddon. Signed by Judge Sam E Haddon on 8/19/2015. (ELL,) (Entered: 08/19/2015)
09/02/2015	23	Emergency MOTION for Leave to Appear by telephone <i>at hearing on motion to dismiss</i> Jeffrey A. Simmons appearing for Plaintiff

		Disability Rights Montana (Simmons, Jeffrey) (Entered: 09/02/2015)
09/02/2015	24	AFFIDAVIT in Support re 23 Emergency MOTION for Leave to Appear by telephone <i>at hearing on motion to dismiss</i> filed by Disability Rights Montana. (Simmons, Jeffrey) (Entered: 09/02/2015)
09/03/2015	25	ORDER granting in part 23 Motion for Leave to Appear Telephonic at 9/3/2015 hearing Signed by Judge Sam E Haddon on 9/3/2015. Phone call placed to Mr. Simmons advising of Order. (DED,) (Entered: 09/03/2015)
09/03/2015	26	<p>MINUTE ENTRYMinute Entry for proceedings held before Judge Sam E Haddon: Motion Hearing held on 9/3/2015 re 10</p> <p>MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Mike Batista, Leroy Kirkegard. Mr. Ellingson present in courtroom and Mr. Simmons present telephonically on behalf of Plainittff. Paulette Kohman present for Defendants in CV-14-25 and Thomas Leonard present for Defendants in CV-14-25 and CV-15-22. Court will approach motions separately and hear arguments in CV-14-25 and then CV-15-22. Court hears from Ms. Kohman, Mr. Ellingson responds, and Ms. Kohman replies; Mr. Ellingson presents a sur-reply. Court finds facts pleaded are sufficient to allow matter to proceed, and denies Defendants 12(b)(6) Motion to be Dismiss. Court hears argument regarding CV-15-22 matter. Mr. Leonard heard on behalf of Defendants, Mr. Ellingson responds, and Mr. Leonard replies. Court presents its findings and grants Defendants Rule 12(b)(6) Motion to Dismiss Hearing commenced at 10:39 and concluded at 11:31. (Court Reporter Julie Lake.) (Law Clerk: Carolyn Sime), (Hearing held in Helena) (DED,) (Entered: 09/03/2015)</p>
09/03/2015	27	ORDER granting 10 Motion to Dismiss for Failure to State a Claim. This case is DISMISSED. Signed by Judge Sam E Haddon on 9/3/2015. (ELL,) (Entered: 09/03/2015)
09/04/2015	28	TRANSCRIPT DESIGNATION ORDER FORM by Disability Rights Montana for proceedings held on 09/03/2015 before Judge Sam E. Haddon. Court reporter Julie Lake. Transcript due by 9/4/2015. (Simmons, Jeffrey) (Entered: 09/04/2015)
09/08/2015	29	TRANSCRIPT DESIGNATION ORDER FORM by Mike Batista, Leroy Kirkegard for proceedings held on 09/03/2015 before Judge

		Hon. Sam E. Haddon. Court reporter Julie Lake. Transcript due by 10/16/2015. (Leonard, Thomas) (Entered: 09/08/2015)
09/08/2015	30	TRANSCRIPT of Motion to Dismiss held on September 3, 2015, before Judge Haddon. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER, the Clerks Office or the court reporter NOTICE: A NOTICE OF INTENT TO REQUEST REDACTION MUST BE FILED WITHIN 14 DAYS OF THIS FILING. Contact Court Reporter Julie Lake, 406-543-6477. Transcript Redaction Procedures . Redaction Request due 9/29/2015. Redacted Transcript Deadline set for 10/9/2015. Release of Transcript Restriction set for 12/7/2015. (ELL,) (Entered: 09/08/2015)
10/01/2015	31	NOTICE OF APPEAL as to 27 Order on Motion to Dismiss for Failure to State a Claim by Disability Rights Montana. Filing fee \$ 505.00 - Rept no. MTX9-8854. (Attachments: # 1 Exhibit Representation Statement) (Simmons, Jeffrey) Modified on 10/1/2015 to add receipt number. Regenerated NEF (APP,). (Entered: 10/01/2015)
10/02/2015	32	USCA Case Number 15-35770 and Time Schedule Order for 31 Notice of Appeal, filed by Disability Rights Montana. (ELL,) (Entered: 10/02/2015)
11/11/2015	33	Unopposed MOTION to Include Portions of Record from Case No. 2:14-CV-25 <i>in the Record on Appeal</i> Jeffrey A. Simmons appearing for Plaintiff Disability Rights Montana (Attachments: # 1 Exhibit Proposed Order) (Simmons, Jeffrey) (Entered: 11/11/2015)
11/16/2015	34	ORDER granting 33 Motion To Include Portions of the Record from Case No. 2:14-cv-25-SEH in the Record on Appeal. Signed by Judge Sam E Haddon on 11/16/2015. (ELL,) (Entered: 11/16/2015)
11/17/2015	35	NOTICE/Docket Sheet from CV-14-25-BU-SEH re 34 Order on Motion for Miscellaneous Relief. Pursuant to Court Order the following documents are included in the record from Disability Rights Montana, Inc, v Oppen, et al CV-14-25-BU-SEH: (Attachments: # 1 Docket No 1 - Complaint, # 2 Docket No 16 - Joint Answer, # 3 Docket No 17 - Motion to Dismiss, # 4 Docket No 18 - Brief/Memorandum in Support of Motion to Dismiss, # 5 Docket No 21 - Response to Motion to Dismiss, # 6 Docket No 33 - Order, # 7 Docket No 42 - Amended Complaint, # 8 Docket No 45 - Joint Answer, # 9 Docket No 46 - Motion to Dismiss, # 10 Docket No 53 - Order Setting Status Conference, # 11 Docket

		No 58 - Order, # 12 Docket No 61 - Transcript, # 13 Docket No 66 - Amended Complaint, # 14 Docket No 67 - Amended Complaint, # 15 Docket No 68 - Brief/Memorandum in Support re Amended Complaint, # 16 Docket No 70 - Order, # 17 Docket No 71 - Motion to Dismiss, # 18 Docket No 72 - Brief Memorandum In Support Re Motion To Dismiss, # 19 Response To Motion Re Motion To Dismiss, # 20 Docket No 78 - Reply to Response to Motion, # 21 Docket No 85 - Order, # 22 Docket No 89 - Motion, # 23 Docket No 90 - Brief Memorandum In Support Re Motion to Amend Correct, # 24 Docket No 93 - Order) For Docket No's 57, 84 and Minute Entry of 5/11/15 please see the Docket Sheet. (ELL,) (Entered: 11/17/2015)
05/08/2017	36	NOTICE of Withdrawal of Counsel: Mary Cile Glover Rogers withdrawing from the case, filed by Mike Batista, Leroy Kirkegard (Glover Rogers, Mary) (Entered: 05/08/2017)
07/19/2019	37	OPINION of USCA as to 31 Notice of Appeal filed by Disability Rights Montana. REVERSED AND REMANDED. (NOS) (Entered: 07/19/2019)
08/12/2019	38	MANDATE of USCA as to 31 Notice of Appeal. The judgment entered July 19, 2019, takes effect this date. (NOS) (Entered: 08/12/2019)
08/13/2019	39	ORDER REASSIGNING CASE. Case reassigned to Judge Donald W. Molloy for all further proceedings. Signed by Judge Dana L. Christensen on 8/13/2019. (NOS) (Entered: 08/13/2019)
08/14/2019	40	NOTICE of Substitution of Counsel by Disability Rights Montana (Rate, Alexander) (Entered: 08/14/2019)
08/14/2019	41	NOTICE of Appearance by Natasha Prinzing Jones on behalf of Mike Batista, Leroy Kirkegard (Jones, Natasha) (Entered: 08/14/2019)
09/10/2019	42	ANSWER to 1 Complaint (<i>Second Amended</i>) by Mike Batista, Leroy Kirkegard. (Leonard, Thomas) (Entered: 09/10/2019)
09/10/2019	43	PRELIMINARY PRETRIAL CONFERENCE ORDER: Preliminary Pretrial Statement due by 10/9/2019. Joint Discovery Plan due by 10/9/2019. Statement of Stipulated Facts due by 10/9/2019. Pretrial Conference set for 10/16/2019 at 1:30 PM in the Russell Smith Courthouse, Missoula, MT before Judge Donald W. Molloy. Signed by Judge Donald W. Molloy on 9/10/2019. (dle) (Entered: 09/10/2019)

10/09/2019	<u>44</u>	JOINT DISCOVERY PLAN by Disability Rights Montana. (Simmons, Jeffrey) (Entered: 10/09/2019)
10/09/2019	<u>45</u>	PRELIMINARY PRETRIAL STATEMENT by Disability Rights Montana. (Simmons, Jeffrey) (Entered: 10/09/2019)
10/09/2019	<u>46</u>	PRELIMINARY PRETRIAL STATEMENT by Mike Batista, Leroy Kirkegard. (Leonard, Thomas) (Entered: 10/09/2019)
10/09/2019	<u>47</u>	STATEMENT OF STIPULATED FACTS by Mike Batista, Leroy Kirkegard. (Leonard, Thomas) (Entered: 10/09/2019)
10/16/2019		MINUTE ENTRY: Minute Entry for proceedings held before Judge Donald W. Molloy: Interim Pretrial Conference held on 10/16/2019. (Law Clerk: H. Garber), (Hearing held in Missoula) (dle) (Entered: 10/16/2019)
10/16/2019	<u>48</u>	SCHEDULING ORDER: Bench Trial set for 3/22/2021 at 9:00 AM in the Russell Smith Courthouse, Missoula, MT before Judge Donald W. Molloy. Final Pretrial Conference set for 3/22/2021 at 9:00 AM in the Russell Smith Courthouse, Missoula, MT before Judge Donald W. Molloy. Amended Pleadings due by 12/4/2019. Discovery due by 11/10/2020. Motions due by 12/8/2020. Proposed Pretrial Order due by 3/15/2021. Signed by Judge Donald W. Molloy on 10/16/2019. (dle) (Entered: 10/16/2019)
12/23/2019	<u>49</u>	AMENDED COMPLAINT against All Defendants, filed by Disability Rights Montana. (Simmons, Jeffrey) (Entered: 12/23/2019)
12/27/2019	<u>50</u>	ORDER. IT IS ORDERED that on or before January 10, 2020, Disability Rights Montana shall SHOW CAUSE why the amended complaint should not be stricken. Signed by Judge Donald W. Molloy on 12/27/2019. (NOS) (Entered: 12/27/2019)
01/07/2020	<u>51</u>	RESPONSE TO ORDER TO SHOW CAUSE by Disability Rights Montana. (Attachments: # <u>1</u> Exhibit 1, Email Exchange, # <u>2</u> Exhibit 2, Redline of Amended Complaint) (Simmons, Jeffrey) (Entered: 01/07/2020)
01/08/2020	<u>52</u>	ORDER. IT IS ORDERED that Defendants Reginald Michael and Lynn Guyer shall file a response to the Amended Complaint pursuant to the Federal Rules of Civil Procedure. Signed by Judge Donald W. Molloy on 1/8/2020. (NOS) (Entered: 01/08/2020)
01/10/2020	<u>53</u>	ANSWER to <u>49</u> Amended Complaint by Lynn Guyer, Reginald Michael. (Leonard, Thomas) (Entered: 01/10/2020)

03/13/2020	54	NOTICE of Withdrawal of Counsel: Jeffrey A. Simmons withdrawing from the case, filed by Disability Rights Montana (Simmons, Jeffrey) (Entered: 03/13/2020)
06/02/2020	55	Joint MOTION to Stay Matthew D. Lee appearing for Plaintiff Disability Rights Montana (Attachments: # 1 Text of Proposed Order Proposed Order to Stay) (Lee, Matthew) (Entered: 06/02/2020)
06/03/2020	56	ORDER denying 55 Motion to Stay. Signed by Judge Donald W. Molloy on 6/3/2020. (dle) (Entered: 06/03/2020)
09/02/2020	57	Joint MOTION to Stay Matthew D. Lee appearing for Plaintiff Disability Rights Montana (Attachments: # 1 Text of Proposed Order Proposed Order) (Lee, Matthew) (Entered: 09/02/2020)
09/02/2020	58	AFFIDAVIT/DECLARATION re 57 Joint MOTION to Stay <i>Declaration of Kathryn A. Burns, M.D., M.P.H.</i> by Disability Rights Montana. (Lee, Matthew) (Entered: 09/02/2020)
09/02/2020	59	AFFIDAVIT/DECLARATION re 57 Joint MOTION to Stay <i>Declaration of Thomas J. Leonard</i> by Disability Rights Montana. (Lee, Matthew) (Entered: 09/02/2020)
09/02/2020	60	AFFIDAVIT/DECLARATION re 57 Joint MOTION to Stay <i>Declaration of Jim Salmonsens</i> by Disability Rights Montana. (Lee, Matthew) (Entered: 09/02/2020)
09/08/2020	61	ORDER re 48 Scheduling Order - RESETTING: Discovery due by 11/9/2021. Motions due by 12/7/2021. Proposed Pretrial Order due by 3/14/2022. Bench Trial RESET for 3/21/2022 at 9:00 AM in the Russell Smith Courthouse, Missoula, MT before Judge Donald W. Molloy. Final Pretrial Conference RESET for 3/21/2022 at 9:00 AM in the Russell Smith Courthouse, Missoula, MT before Judge Donald W. Molloy. 57 Joint MOTION to Stay DENIED as to request for stay. Signed by Judge Donald W. Molloy on 9/8/2020. (dle) (Entered: 09/08/2020)

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