

**United States District Court  
District of Minnesota  
Fourth Division**

Kevin Scott Karsjens, David Leroy  
Gamble, Jr., Kevin John DeVillion,  
Peter Gerard Lonergan, James Matthew  
Noyer, Sr., James John Rud, James  
Allen Barber, Craig Allen Bolte,  
Dennis Richard Steiner, Kaine Joseph  
Braun, Brian Keith Hausfeld,  
Christopher John Thuringer, Kenny S.  
Daywitt, Bradley Wayne Foster,  
**Plaintiffs,**

Court File # 11cv3659 DWF/jm

vs.

Minnesota Department of Human  
Services, Minnesota Sex Offender  
Program, Lucinda Jesson, Kevin  
Moser, Dennis Benson, Michael  
Tessner, Tom Lundquist, Jim Berg,  
Ann Zimmerman, Laurie Severson,  
Greg Carlson, Dr. Elisabeth Barbo,  
Mehrdad Sabestari, Terry Kneisel,  
Scott Benoit, Susan Johnson, Jean  
Seykora, John Doe and Jane Doe,  
(Whose true names are unknown),  
**Defendants.**

**COMPLAINT FOR VIOLATION OF  
CIVIL RIGHTS PURSUANT TO 42  
U.S.C. 1983 JURY TRIAL  
DEMANDED**

**I INTRODUCTION**

1. Plaintiffs state that during involuntary civil confinement, as Patients<sup>1</sup> in the Minnesota Sex Offender Program.<sup>2</sup> Defendants are employees of Department of Health and Human Services<sup>3</sup> have and continue to deprive Plaintiffs' of rights and privileges available to other patients civilly committed to the DHS. Plaintiffs have also been

<sup>1</sup> Pursuant to Minnesota statute 246.01 Subd. 1a "Patient" means a person who is admitted to the Minnesota Sex offender Program or subject to a court hold order under section 253B.185 for the purpose of assessment, diagnosis, care, treatment, supervision, or other services provided by the Minnesota Sex Offender Program. "Clients" were previously referred to as "patients" as enumerated in 253B.02 Subd. 15.

<sup>2</sup> Hereinafter referred as "MSOP"

<sup>3</sup> Hereinafter referred to "DHS"

**SCANNED**

DEC 21 2011

U.S. DISTRICT COURT ST. PAUL

*John*

deprived of the standards set by the Minnesota Commitment and Treatment Act.<sup>4</sup> Plaintiffs' allege that their Federal Civil Rights to Procedural & Substantive Due Process pursuant to the Fourteenth Amendment have been violated and that their First, and Fourth Amendment rights have been violated through the Fourteenth Amendment of the United States Constitution and Bill of Rights.

2. The Plaintiffs' cause of action includes the Reconstruction Civil Rights Act of 1871, 42 U.S.C. § 1983, based on violations of their federal constitutional rights. Plaintiffs' further allege supplementary claims under the Minnesota State Constitution, Patients Bill of Rights, and Civil Commitment and Treatment Act, administrative rules and internal agency policies.

## **II JURISDICTION & VENUE**

3. This is a civil action authorized by 42 U.S.C. § 1983 to address the deprivation, under Color of State Law, of rights secured by the Bill of Rights of the United States. The court has jurisdiction under 28 U.S.C. §§ 1331 & 1343(a) (3).
4. Plaintiff seeks declaratory relief pursuant to 28 U.S.C. §§ 2201 & 2202. Plaintiff's claims for injunctive relief are authorized by 28 U.S.C. §§ 2283 & 2284 of the United States Code. Plaintiffs further seek monetary, compensatory and punitive damages.
5. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) as all Defendants reside in the district and a substantial part of the events and omissions giving rise to the claims occurred in this District.

## **III DECLARATORY AND INJUNCTIVE RELIEF**

6. This court has the authority to grant declaratory relief pursuant to 28 U.S.C. §2201 as an actual controversy exist regarding the rights, privileges and immunities to which Plaintiff is entitled. Moreover, pursuant 28 U.S.C. §2201, this Court has authority to grant injunctive relief and any other necessary and proper relief that is deemed just and proper by the Court.

## **IV PLAINTIFFS**

7. Plaintiffs are all Patients and at all times mentioned herein are civilly committed people in the Minnesota Sex Offender Program, also known as the MSOP in the State of Minnesota in the custody of the Department of Human Services. Plaintiffs are currently confined/hospitalized in the MSOP in Moose Lake, Minnesota, 55767, or 100 Freeman Drive, St. Peter, Minnesota, 56081.

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<sup>4</sup> Hereinafter referred to "The Act"

## V DEFENDANTS

Defendants are as follows:

8. The DHS is the agency responsible for overseeing the running of the State Hospitals and protecting the Patients' rights. DHS is also responsible for policies and practices implemented through its various agencies.
  - A. Lucinda Jesson is the commissioner of Minnesota Department of Human Services (DHS) and together with other DHS officials, deputies and assistants, oversees the policies, procedures, and practices at MSOP. As head of the DHS, Commissioner Jesson's duties include the protection and treatment of Patients who are being involuntary held pursuant to indeterminate commitment as SPP/SDP. The Minnesota Department of Human Services, a subdivision of the government of the State of Minnesota is located at 444 Lafayette Road North, St. Paul, MN 55155. DHS through its Subdivision, Minnesota State operated Services, is the Agency responsible for the operations of Minnesota Sex offender Program. She performs her duties in St. Paul, Ramsey County, Minnesota, and upon information and belief has taken actions relevant to this lawsuit in that location.
  - B. Dennis Benson is the Executive Director of the MSOP, and is primarily located at 444 Lafayette Road North, St. Paul, MN 55155. He performs his duties in St. Paul, Ramsey County, Minnesota, and upon information and belief has taken actions relevant to this lawsuit in that location.
  - C. Michael Tessner is the Director of State Operated Services and is primarily located at 444 Lafayette Road North, St. Paul, MN 55155. He performs his duties in St. Paul, Ramsey County, Minnesota, and upon information and belief has taken actions relevant to this lawsuit in that location.
  - D. Kevin Moser is the Director of the MSOP. Upon information and belief, he is responsible for and has been directly involved in the Plaintiffs' violations of constitutional and statutory rights. He performs his duties in Moose Lake, Carlton County, Minnesota, and upon information and belief has taken actions relevant to this lawsuit in that location.
  - E. Dr. Elizabeth Barbo is the Assistant Director of the MSOP. Upon information and belief, she is responsible for and has been directly involved in the Plaintiffs' violations of constitutional and statutory rights. She performs her duties in Moose Lake, Carlton County, Minnesota, and upon information and belief has taken actions relevant to this lawsuit in that location.
  - F. Tom Lundquist is the Clinical Director of the MSOP. Upon information and belief, he is responsible for and has been directly involved in the Plaintiffs' violations of constitutional and statutory rights. He performs his duties in Moose

Lake, Carlton County, Minnesota, and upon information and belief has taken actions relevant to this lawsuit in that location.

- G. Jim Berg is the Assistant Clinical Director of the MSOP. Upon information and belief, he is responsible for and has been directly involved in the Plaintiffs' violations of constitutional and statutory rights. He performs his duties in Moose Lake, Carlton County, Minnesota, and upon information and belief has taken actions relevant to this lawsuit in that location.
- H. Greg Carlson is the Acting Director of the MSOP. Upon information and belief, he is responsible for and has been directly involved in the Plaintiffs' violations of constitutional and statutory rights. He performs his duties in Moose Lake, Carlton County, Minnesota, and upon information and belief has taken actions relevant to this lawsuit in that location.
- I. Ann Zimmerman is the Security Director of the MSOP. Upon information and belief, she is responsible for and has been directly involved in the Plaintiffs' violations of constitutional and statutory rights. She performs her duties in Moose Lake, Carlton County, Minnesota, and upon information and belief has taken actions relevant to this lawsuit in that location.
- J. Terry Kneisel is a current Program Manager of the MSOP. Upon information and belief, he is responsible for and has been directly involved in the Plaintiffs' violations of constitutional and statutory rights. He performs his duties in Moose Lake, Carlton County, Minnesota, and upon information and belief has taken actions relevant to this lawsuit in that location.
- K. Laurie Severson is a current Program Manager of the MSOP. Upon information and belief, she is responsible for and has been directly involved in the Plaintiffs' violations of constitutional and statutory rights. She performs her duties in Moose Lake, Carlton County, Minnesota, and upon information and belief has taken actions relevant to this lawsuit in that location.
- L. Scott Benoit is a current Program Manager of the MSOP. Upon information and belief, he is responsible for and has been directly involved in the Plaintiffs' violations of constitutional and statutory rights. He performs his duties in Moose Lake, Carlton County, Minnesota, and upon information and belief has taken actions relevant to this lawsuit in that location.
- M. Susan Johnson is a current Program Manager of the MSOP. Upon information and belief, she is responsible for and has been directly involved in the Plaintiffs' violations of constitutional and statutory rights. She performs her duties in Moose Lake, Carlton County, Minnesota, and upon information and belief has taken actions relevant to this lawsuit in that location.
- N. Jean Seykora is rehabilitation Therapies Director of the MSOP. Upon information and belief, she is responsible for and has been directly involved in the Plaintiffs' violations of constitutional and statutory rights. She performs her duties in Moose

Lake, Carlton County, Minnesota, and upon information and belief has taken actions relevant to this lawsuit in that location.

- O. Defendants John Doe and Jane Doe, whose true names are unknown, are employees of DHS/MSOP who have been responsible for violating Plaintiffs' rights in connection with incidents described in this complaint.
- P. All individual Defendants named above are being sued in both their personal and official capacities. At all times relevant hereto, all individual Defendants were acting under color of state law.

## VI STATEMENT OF FACTS

- 9. Minnesota Statutes §§ 253B, 144.651 & 246B, promulgate the Minnesota Sex Offender Program, and Minnesota Rules §§ 9515.3000, 9515.3100 provide sex offender treatment to people committed as a Sexual Psychopathic Personality<sup>5</sup> (253B.02, Subd. 18b) or Sexually Dangerous Persons<sup>6</sup> (253B.02) Subd. 18c).
- 10. Since 1939 the State of Minnesota has committed people as Psychopathic Personalities<sup>7</sup>. In 1994 the Minnesota Legislature amended the statute to allow commitment of Sexual Psychopathic Personality and Sexually Dangerous Person. The Minnesota Supreme Court and the U.S. Supreme Court held that the commitment statutes protected Procedural Due Process, and Equal Protection.
- 11. The Legislature has amended the statutes relating to the commitments of SPP/SDP almost yearly since 1994. These Amendments to Minn. Stat. § 253B & other related statutes have led to diminished Procedural Due Process protections, and significant

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<sup>5</sup> Hereinafter "SPP"

<sup>6</sup> Hereinafter "SDP"

<sup>7</sup> Minnesota ex rel. Pearson v Probate Court of Ramsey County. 309 US 270,271-272, 84 L Ed 744, 60 S Ct 523 (1940)(Minnesota statute permitting commitment of dangerous individual with "psychopathic personality").

changes in how the MSOP operates. Since the Amendments to the Minnesota Statute in 1994, the population at MSOP has increased by an alarming rate<sup>8</sup>.

12. In 1994 the MSOP was operating in a hospital setting. The individual rooms for Patients were adequate for their purposes. The rooms provided a regular mattress, bed, a dresser of drawers, a desk, and adequate storage for personal property. Private bathroom stalls were made available for Patients. The toilets were not in the rooms. Patients were afforded personal privacy. Patients were not locked in their rooms.

13. Patients were allowed to purchase game systems such as Playstations, Nintendo 64, Game Boy, and Playstations 2 systems, televisions, word processors, unlimited size televisions, personal furniture, personal aquariums, computers, computer related peripherals. Patients also had a choice of vendor.

14. Patients were allowed to shop at local stores, cook food on stoves and barbeques. Patients could run their own businesses. Patients were able to carry cash, conduct personal banking and conduct transactions. Patients could also buy, sell, trade, and barter with other patients with approval of their treatment team.

15. Patients were not restricted in forms of self expression such as; Patients were allowed to wear any type of jewelry that could not be used as a weapon. Patients wore any type of appropriate personal clothing.

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<sup>8</sup> See Plaintiff's Exhibit 1: Office of the Legislature Auditor- Civil Commitment of Sex Offender-Evaluation Report at 3-9.

16. Patients had visits with family and friends. They were allowed to prepare food, or order food delivered to eat with family and friends. Vending machines were available on visits. Visitors could drop off gifts and groceries on their visits for patients. Patients could hold hands or place an arm around a loved one or hold their children during visits. Patients visiting hours were from 1-9 pm every day of the week.

17. Patients could make and receive telephone calls on unmonitored public pay phones, could use prepaid phone cards purchased from a vendor of their choice. Mail received was opened by the patient in front staff and not censored, but was inspected for contraband. Outgoing mail was sealed by the patients and was uncensored. Patients bought stamps for postage.

18. Patients were not subjected to strip searches. Patients were allowed to leave the facility with a staff escort without physical restraints. Patients could move freely on the compound. Patients could socialize freely with other Patients in the MSOP. Patients were not locked in their rooms during count or nighttime hours. Patients were locked in protective isolation for more than 24 hours for behavioral incidents without any due process.

19. Patients received adequate medical care that was commensurate with community standards. All Patients who wanted received sex offender treatment.

## PRESENTLY

20. After the amendments to the statutes from 1994 through 2011, the administration of the MSOP was replaced with previous administrators of the Minnesota Department of Corrections. As a result, the policies and procedures of the MSOP drastically changed to a Maximum Security facility, instead of a treatment facility.
21. The MSOP treatment center is now modeled after a modern day maximum security penitentiary. The MSOP treatment center is not accredited by the "Joint Commission on Accreditation of Health Care Organization." Whereas nearly all other treatment facilities in the State of Minnesota are accredited. The MSOP treatment facility is surrounded by double-razor wire fences with roving patrols.
22. Patients' are compelled to wear full restraints, including: handcuffs, black box, leg irons, and a waist chain belt anytime the patient is required to leave the secured area. While being transported, patients are placed in a small cage in the back of a van.
23. Patients are subjected to unwarranted pat searches of the body, unclothed body searches and body cavity searches without reasonable suspicion being established. Searches are conducted in areas that never had need for searches. Plaintiffs' must be pat searched whenever leaving the craft room in recreation, visiting area, or vocational work areas. Plaintiffs' are subjected to strip searches upon entry to High Security Area, regardless of the incident that lead to being placed in the High Security

Area. When a Patient refuses to comply with a strip search the facility staff will forcibly cut off the Patient's clothing and inspect his groin and buttocks.

24. Patient visiting is limited. There is a pre-approved visiting list that requires a patient's visitor to go through a criminal background check. The Visitor's contact is limited to one hug at the beginning and end of a visit. The MSOP has created draconian practices for visiting. Forcing visitors to comply with such conditions, such as being pat searched, to other invasions of personal privacy. This works to discourage visitors from coming back and further isolates patients from outside contact.

25. Patients are only allowed three totes<sup>9</sup> to put all their property in, except electronics. This includes but is not limited to: legal papers, spiritual items, clothing, and all other personal property which is kept under Patient's bed. This area for storage is three totes.

26. Patients are forced to wear identification badges. The facility has controlled movement policy and procedure which includes "5 minute moves" from one building to another. Metal detectors are in the hallways. There are multiple counts and one *Stand up ID Verification* count per day; identical to DOC Procedures for maximum security prisoners.

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<sup>9</sup> 26¼ inches long by 9¾ inches wide by 8¼ inches deep.

27. Patients are not allowed to purchase food or certain electronics from outside vendors.

The Patients are expected to pay extremely high prices for canteen thru Minncor<sup>10</sup>. Minncor supplies mattresses, beds, Pillows, sheets, blankets, towels, and furnishings.

28. Patients are double bunked in wet cells.<sup>11</sup> These cells contain 2 metal beds frames, manufactured by MINNCOR, (which are less then 30 inches across from each other). A MINNCOR mattress that is hard and not supportive, two small stainless steel desks, a stainless steel toilet/sink combo are fixed in the wet cells. The double bunking has resulted in increased sexual and physical assaults, in which the facility has neglectfully responded too. On several occasions Patients have had incompatibilities resulting in sexual or physical assaults. The MSOP does not take seriously the threat of assaults of Patients and in most cases disciplined those who have reported the physical assault/sexual assault or chooses to ignore the problem altogether. The Patients victimized are not given counseling for the victimization<sup>12</sup>. When the State of Minnesota civilly commits a person involuntary, it restricts his liberty against his will, the Constitution imposes upon it, a corresponding duty to insure safety and general well-being. When the State acts under affirmative exercise of its power to restrain an individual's liberty, then renders the Patient's ability to care for himself, and fails to provide basic care and safety and basic needs e.g., food, clothing, shelter,

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<sup>10</sup> MINNCOR is a Department of Corrections for-profit Corporation that contracts with MSOP for multiple services.

<sup>11</sup> These cells do not conform with the minimal standards pursuant to law; 70 sq feet of usable floor space per patient.

<sup>12</sup> Several physical / sexual assaults have occurred; one case was recently settled, Goldhammer v. Moser, (Minn. Dist. 2011) by MSOP allowing the client to have a single room, X-BOX-360 game system, outsourced sex offender treatment and a monetary award. One other lawsuit is pending.

medical care, and reasonable safety, it transgresses the substantive limits on state action set by the Fourteenth Amendment of the Equal Protection Clause.

29. MSOP Staff minimizes assaults and confrontations among the Patients, and is instead concerned with assaults on themselves. In fact, the Minnesota Legislature adopted Minnesota Statute 609.2231 Subd. 3a, to protect staff from assault. This particularly applies only to employees of MSOP who are assaulted by Patients of the MSOP. State prisoners do not sustain the same penalties as Patients in MSOP. The penalties for a patient at MSOP are 5 years statutory supervised release time and require more prison time. This is an unequal application of law, because the SPP's and SDP's are citizens with the full accompaniment of civil rights, not convicted persons with fewer rights. This demonstrates how civilly committed sex offenders are a new class of, and/or race of citizen with diminished civil rights by virtue of sexual predilection.

30. Patients may no longer possess personal computers, laptop computers, and computer software or storage discs of any sort. Nor are patients allowed access to printers, copiers, scanners, or any access to the internet. This further draws patients away from society because they could be earning college degrees, working, or just emailing loved ones.

31. Patients are no longer allowed to purchase game systems, personal furniture, personal bedding, and other personal property that was once allowed.<sup>13</sup> Patients are subjected

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<sup>13</sup> One Patient is now allowed an X-Box-360 as part of a lawsuit settlement

to having their personal property arbitrarily considered contraband and seized by the MSOP. Patients are forced, at their own expense, to send out property or have it disposed of. The MSOP allows 10 days to send out property or destroys the Patient's property. Many of Patients have lost thousands of dollars in property.

32. Patients are restricted from possessing certain commercially produced media (books & movies) which are determined to be contraband without consultation with the patient charts to determine if such media would be harmful or otherwise counter-therapeutic for the patient to possess. All movies not on a pre-approved list must be reviewed by security staff. On no other authority, and without consulting the patient's chart, the security staff may determine if the movie is contraband or not. There is no designated appeal process; and no standard of what is and what is not allowed. This Court has already ruled on this issue in another case: *Kruger v. Goodno*.<sup>14</sup>

33. The MSOP does not store Patients' property that has previously been allowed and is now considered contraband. Patient's are denied due process if they challenge the MSOP on property issues. Patients must submit a request to appeal the denial of property. The request takes ten business days to be answered. By the time the first request is answered, the property has already been destroyed. Patients must submit at least two (2) requests before they may file a grievance; which is well beyond the ten (10) days to remove the property.

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<sup>14</sup> Docket No.'s: 05-cv-1451 (JMR/FLN); and 05-cv-1504 (JMR/FLN).

34. The State of Minnesota has held that the MSOP is not liable for any purposeful damage, destruction or loss of property because it belonged to Patients at the MSOP under its tort act<sup>15</sup>
35. The MSOP also opens all Patients packages received at the facility (whether ordered or not), disposes of the original packaging and shipping boxes. If the item is later deemed contraband the Patient must send it back or it will be destroyed. Most vendors will not accept the item without the original packing. The Patient then suffers the loss of the property or money.
36. The MSOP staff wears uniforms that are identical to the uniforms worn by the Department of Corrections. An "A-Team" and "B-Team" are assigned to monitor the facility and are authorized to use force against a Patient, including, but not limited to: physical force, chemical spray, and the ability to forcefully cut off the clothing and do an unclothed body cavity search. Staff members are disrespectful towards the Patient' making jokes about the Patient population, such as an e-mail passed around by the staff that stated, "What is the difference between Patients at MSOP and inmates at DOC?" "The prisoners have a release date and get to go home." Other staff and administrators have repeatedly told the Hospital Review Board. "We will continue to do what we want until we are sued and a court order says different." The arrogant abuses of power occur because the Commissioner of DHS delegates the entire

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<sup>15</sup> See Minnesota Stat. § 3.736 Subd. 3 (m)

commissioner's oversight of the MSOP, back to the facility director. Therefore, there is no "outside" entity overseeing the abuses of the MSOP.

37. Patients' vocational work assignments are limited to menial labor. Patients' must perform unit janitorial maintenance work to progress in treatment or receive vocational placement. Patients do not have access to facility jobs which would cause the patient to be more employable; such as plumbing, electrical, HVAC or any other vocational programs which would afford Patient's actual and meaningful job skill for re-entry into society. Further, regardless of a patient's previous college degree, or age, he must maintain certain educational qualifications to hold a vocational work assignment or advance in treatment.

38. Most policies and procedures implemented since the hire of Defendant Benson have been adopted from the DOC, including but not limited to: Use of Force; Office of Special Investigators, Intelligence Information Gathering, Evidence Policy, Internal Affairs Investigations, Patients' Communications, Programming Policy, Behavioral Expectation Reports,<sup>16</sup> Client Grievances, Client Request Policy, and Visiting Behavioral Expectations, Mail Policy, Property Policy, Visiting Policy<sup>17</sup>.

39. The Behavioral Expectations policy and handbook was issued in 2009 (updated in 2011) detailing behavioral violations, consequences and a Disciplinary Due Process procedure for BERs. The procedure denies Due Process, Patients are not allowed to

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<sup>16</sup> Hereinafter "BER."

<sup>17</sup> See Exhibit 3.

present evidence, cross examine witnesses, or face their accusers in a formal hearing. Patients' are not given copies of the incident reports or evidence that is being used against them to impose disciplinary restrictions. Disciplinary reports or behavioral expectations directly affect progression in treatment and the Patient's freedom. Disciplinary restrictions will cause at least a 6 month delay in progression in treatment. Patient's who choose to appear before a formal hearing panel, are punished for requesting the hearing. The hearing board is made up of employees that have an interest in delaying the treatment progression of the Patient. The hearing board is not impartial and the appeal process lacks due process as well. A Patient may appeal to the facility director only. Most of the policies and procedures are implemented by the director. The MSOP has a history of backing up Incident Reports written by staff. The informal sanction system is equally flawed. A staff member may write-up a BER and issue consequences without any Due Process being provided whatsoever. The Patient is not allowed to refute the evidence and is not provided the evidence that led to the BER. The clinical team issues an Individual Program Plan that expands restrictions and limits the rights of Patients for up to six months without any Due Process; it can also be extended without due process. In addition to BER's and the consequences given by the Behavioral Expectation Unit, the clinical team and vocational services utilize Individual Treatment Plans<sup>18</sup> and Treatment Memos to issue further consequences on patients. The vocational services will often remove the Patients from the vocational *Work for Pay Program* or reduce the amount of hours he

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<sup>18</sup> Hereinafter "ITP"

is entitled to participate as a result of getting a BER. Plaintiffs' are not convicted criminals, but *Mental Patients*, the effect of the BERs are punishment, complete with detention. Plaintiffs cannot lawfully receive punishment absent due process.

40. Linens and commissary are provided by MINNCOR. A prison industry contracted at the MSOP since 2008. Patients can no longer possess personal bedding, towels, washcloths, blankets; and have no choice of vendor to buy food, hygiene, over-the-counter medications etc... Plaintiffs must purchase all food, hygiene, over-the-counter medications from MINNCOR. The MSOP receives a commission from MINNCOR on all commissary sold, over the counter medications sold, and phone time/usage purchased. Patients continuously object to MINNCOR and plead to get rid of it and contract with other local suppliers.

41. The Defendants limit the Patients Bill of Rights to Plaintiffs pursuant to Minnesota Statutes §§ 144.651 and 253B.03 by placing all patients on perpetual Administrative Restriction.

42. Medical services are now provided by the Department of Corrections contractor, "Correctional Medical Services." Medical care has deteriorated and many Patients' have suffered injuries as a result. The MSOP now requires all Patients to purchase over the counter medications from MINNCOR and will not provide OTC medications. The lack of medical treatment at the MSOP is so neglectful that it has resulted in the serious harm of Patients. More than 30 Patients have died at the

MSOP, some as a result of negligence, and others have gone untreated for salmonella poisoning, and diabetes complications; lost digits, waiting weeks for an x-ray of broken bones, etc...

43. The MSOP has, on several occasions, told Minnesota legislatures that because of budgetary restraints they would be forced to release sex offenders into the community if not given the funds to operate the MSOP. Because of budgetary cutbacks, sex offender treatment, which was already lacking, was cut from 10 hours a week to 6 hours a week. A diet of beans, rice and processed cereal based foods has become the main staple for nutrition. Patient recreation has been reduced; the recreation gym has been halved to create a make-shift dining room.

44. The MSOP however, has built new break rooms for staff with new vending machines, computers with internet access, and staff refrigerators. They have purchased new vehicles and installed (literally) hundreds of new cameras. They have purchased new uniforms, shoes and boots for staff, new equipment such as: weapons, pepper spray, and other riot gear; even though there has never been a riot at the MSOP since its inception. The facility also purchased new computers and phone systems for staff.

45. Patient personal computers were removed from the MSOP by February 28, 2008. A Patient network was established with four (4) computers per 96 patients to perform word-processing and other simple tasks. The MSOP seized all removable media such as floppy disks and CD-ROMs and have instructed Patients that they will have to print

their electronic files instead of allowing them to save files on electronic media to send to courts, attorneys or family etc... This restriction is overly burdensome on the Patient and his restricted space. Patient's have been denied and restricted from using or accessing the Internet even though no individual reasonable suspicion has ever been established to warrant the restriction. The MSOP also already possesses the commercial software necessary to monitor an Internet Server, which is already online for employees of the MSOP. The MSOP denies patients any and/or all technologies, i.e. cellphones, Ipads, MP3 Players, etc...

46. Plaintiffs' allege that the telephone rates are so exorbitant as to deprive Patients' of reasonable and meaningful telephone access. The MSOP contracts with MINNCOR and Global Tel link<sup>19</sup> to provide telephone service to Patients at the MSOP. The MSOP receives .49¢ kickback from every dollar of telephone time, purchased by Patients from the MSOP. It is therefore in the interest of the MSOP to contract with the highest bidder.

47. The MSOP & Global Tel Link may violate FCC laws; under maximum price restrictions. Instead of competition driving the cost of Patient telephone calls down, the competition for this prison-like telephone contract with kickback naturally drives the cost up. In this setting, it violates civil rights. Plaintiffs' are not prisoners, are not convicted nor sentenced to punishment, which is the only exception for price restrictions as set by the Minnesota Public Utilities Commission.

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<sup>19</sup> A company who contracts with many prisons to provide telephone service at inflated prices.

48. Many restrictions imposed by the MSOP have risen to a level of abuse by the standards of professional judgment, decision, or conduct.
49. Nearly every policy and procedure implemented since 2008 goes far beyond the scope of *Professional Judgment* and is now for staff convenience. The real mission of the MSOP now is institutionalization, preventative detention and punishment. There is no rehabilitative purpose. None of these restrictions were necessary in the prior years to maintain control of the facility. The restrictions and changes have actually created a hostile environment that encourages a sense of hopelessness, powerlessness, and fear.
50. The MSOP has a history of retaliating against, and holding back Patients from progressing in treatment for exercising their rights to grievances and lawsuits.
51. Many Patients' in the MSOP have no legal representation and have been programmed and are encouraged by the MSOP to not challenge the treatment program.
52. In 2006, the 8th Circuit Court of Appeals ruled that "Neither the Supreme Court nor this court has determined the extent to which the Constitution affords liberty interests to indefinitely committed dangerous persons under the Matthews balancing test. Since a person has been civilly committed as a dangerous person, his liberty interests are considerably less than held by members of a free society<sup>20</sup>. As compared to a

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<sup>20</sup> See *Wilkenson v. Austin*, 545 U.S. 209, 125 S. Ct. 2384, 2395-96, 162 L. Ed. 2d 174 (2005); *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972)

prison inmate, however, a committee was entitled to more considerate treatment and conditions of confinement<sup>21</sup>. Civilly committed sex offenders retain certain rights. In particular, they have a right to receive treatment or other training that will give them an opportunity to regain some or all of their rights to liberty<sup>22</sup>.

53. In a report authored by the Office of the Legislative Auditor,<sup>23</sup> it states in part: “The Minnesota’s civil commitment laws do not violate offenders’ fundamental rights to liberty and Due Process so long as treatment and periodic review is provided. While civilly committed sex offenders in Minnesota, therefore, have a right to adequate treatment, in the United States. The United States Supreme Court has held that courts should defer to the judgment of treatment professionals in judging what treatment is constitutionally adequate in the context of civil commitment programs. The standard for reviewing whether treatment is adequate is whether treatment exercised professional’s judgment in running the treatment program. While this may be a low bar for judging treatment programs, a federal court found that the program administrators in the state of Washington failed to exercise their professional judgment in running their civil commitment program, resulting in a 13 year injunction while the program corrected the treatment program. In that case, the court found that the treatment program had so departed from minimal professional standards that the

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<sup>21</sup> Youngberg v. Romeo, 457 U.S. 307, 322, 102 S. Ct. 2452, 73 L. Ed 2d 428(1982); Senty Haugen v. Goodno, 426 F.2d 876(2006\*th Cir) See also Hydrick v. Hunter, 500 F. 3d 978 (9<sup>th</sup> Cir .2007

<sup>22</sup> Youngberg v. Romeo, 457 U.S. 307, 322, 102 S. Ct. 2452, 73 L. Ed 2d 428(1982)(Whole this case did not explicitly apply this holding to civilly committed sex offenders as well, see Turay v. Seling et al, 108 F. Supp. 2d 1148(W.D.Wash. 2000)

<sup>23</sup> See Plaintiff Exhibit 1 & 2.

treatment professionals must not have based their treatment decisions on their professional judgment. Some of the conditions which led to the injunction included: inadequate staffing, inadequate training of staff regarding the clinical mission of the facility, the lack of individualized treatment, the absence of arrangements for Patients' to transition to being released, inadequate provisions to allow Patients' families to participate in treatment, and a punitive treatment environment<sup>24</sup>. As a result, it is important that any civil commitment program for sex offenders offer adequate treatment to those in the program. A court could consider failure to release offenders from civil commitment as evidence that inadequate treatment is being provided or that the purpose of the program is punitive rather than rehabilitate. It should be noted, however, that participation in treatment is voluntary. Residents at a civil commitment facility may decline treatment, but a facility must at least offer each resident the opportunity to participate in treatment<sup>25</sup>.

54. Patients are not billed for individualized care. Instead, patients are billed a per diem rate regardless of the individual costs. There are many levels of care and many varying levels of cost, depending upon the programming the patient receives or otherwise requires. Yet all of the patients are charged at one daily rate regardless of individual needs.

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<sup>24</sup> Turay v. Seling et al, 108 F. Supp. 2d 1148(W. D. Wash 2000).

<sup>25</sup> See Plaintiff Exhibit 2 at 51-55

55. For patients who have health insurance coverage, the billing system doesn't work. Plaintiffs who have health insurance cannot use that coverage to pay the costs associated with the MSOP. This is because the MSOP does not follow the accepted billing procedures, is not accredited and/or otherwise does not meet the standards of recognized mental health care. In other words, patients who are civilly committed as mentally ill to the MSOP are receiving such deficient treatment, under such poor conditions, that it cannot be paid for through mental health insurance coverage.
56. The MSOP does not provide constitutionally adequate treatment. Currently the MSOP has changed the programming approximately every three years. In doing so, a Patient must literally start treatment all over. The practice violates the Patient's right to due process and his constitutional right to adequate treatment and to release from commitment. There are plaintiffs herein that have been in treatment for more than 20 years.
57. Nearly all of the treatment is designed to deal with the conditions of confinement and how the Patient is adapting to institutionalization rather than rehabilitation for committing illegal sexual acts. Nearly all treatment groups do not involve sex offender specific treatment, which is the purpose. Instead therapy focuses largely on the criminal or convict attitudes that are associated with long-term institutionalization and/or the current prison confinement, not sexual offending.

58. Wyatt v. Stickney<sup>26</sup> demonstrates the minimum constitutional standard for confinement in treatment centers. The U.S. Supreme Court in Youngberg<sup>27</sup> referred to Wyatt v. Stickney as a controlling case regarding constitutional standards for civil commitment. The *Eighth Circuit* has adopted and recognized these rights.<sup>28</sup> In Wyatt, the court stated: “The Patients for the most part, were involuntarily committed through non-criminal procedures and without the constitutional protections that are afforded Defendants in criminal proceedings. When Patient’s are so committed for treatment purposes they unquestionably have a constitutional right to receive such individual treatment as well as give each of them a realistic opportunity to be cured or to improve his or her mental condition.”<sup>29</sup> Adequate and effective treatment is constitutionally required. “Treatment efforts must be directed to that aspect of his behavior which caused him to be classified as dangerous so that he has a reasonable opportunity to be eventually discharged from maximum security confinement. To hold otherwise would certainly ‘transform the hospital into a penitentiary where one could be held indefinitely for no convicted offense.’”<sup>30</sup> The purpose of involuntary hospitalization for treatment purposes is treatment.

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<sup>26</sup> Wyatt v. Stickney, 334 F. Supp. 1341 (M.D. Ala. 1971); 344 F. Supp. 373, (M.D. Ala.1972)

<sup>27</sup> Youngberg v. Romeo, 457 U.S. 307, 322, 102 S. Ct. 2452, 73 L. Ed 2d 428(1982)

<sup>28</sup> See Coley v. Clinton, 635 F. 2d 1364, 1375 (8th Cir. 1980).

<sup>29</sup> Id Wyatt.

<sup>30</sup> Eckerhart v. Hensley, 475 F. Supp. 908, 915 (MI D. 1979); citing Ragsdale v. Overholser, 108 U.S. App. D.C.308, 315, 281 F. 2d 943, 950(1960).

59. The MSOP, unlike the treatment programs offered in Wyatt, or other states, does not offer a realistic opportunity to be cured/improve patients' condition or be released<sup>31</sup>. In the MSOP, the Patient is held in penitentiary conditions that violate his constitutional rights<sup>32</sup>. The treatment program offered is a complete failure. In fact, in its 20+ year history one Patient was granted provisional discharge 20 years ago, but was later returned for a technical violation to the facility and died while confined.

60. In evaluating the minimal Constitutional professional standards of care as applied in Wyatt, for adequate treatment, the MSOP comes up short. The following are but a few examples of the Wyatt Standards:

61. IV. *Humane Physical and Psychological Environment* 15. Residents shall have a right to dignity, privacy and humane care. [In the MSOP a staff member can view the Patient on the toilet, in the shower, or while getting changed in his room by opening a window or flap for "wellness checks." These checks are done at random intervals. The right to dignity is taken away by the policies that allow the facility to cut off the Patients clothes and perform an unclothed body search].

62. II. Adequate Habilitation of Residents, 3 c. Residents shall have a right to the least restrictive conditions necessary to achieve the purposes of habilitation. To this end, the institution shall make every attempt to move residents from more to less

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<sup>31</sup> See plaintiff's Exhibit 2 at 51-71

<sup>32</sup> Id.

structured living; [There are no least restrictive conditions in the MSOP. It is designed to mirror maximum-security prison].

63. IV. *Humane Physical and Psychological Environment* 19. Residents shall have the same rights to telephone communication as Patients at [] public hospitals, except to the extent that qualified Mental Health Professional responsible for formulation of a particular Patients treatment plans writes an order imposing special restrictions. The written order must be renewed after each periodic review of the treatment plan if any restrictions are to be continued. Patients' shall have an unrestricted right to visitation with attorneys and with private physicians and other health professionals. [In the MSOP, Patients phone conditions are much less desirable than others committed under The Act. The MSOP does not apply restrictions to individual Patients, the restrictive phone policies were applied to every MSOP Patient in the facility without any reviews or identification in the individual treatment plans. The Patients' phones have been over charged and overly exploitive of the conditions for why Patients' are here. When the phone is answered it will say the call is originating "from a client at the Minnesota Sex Offender Program." The cost is \$5.00-\$6.00 per 15 minute call. This practice of price-gouging limits the Patients right to communicate with his family. Most Plaintiffs survive on a monthly \$89.00 *General Assistance* check and cannot cover such a large expense.]

64. IV. *Humane Physical and Psychological Environment* 20. Residents shall be entitled to send and receive sealed mail. Moreover, it shall be the duty of the institution to

facilitate the exercise of this right by furnishing the necessary materials and assistance. [The MSOP Patients mail is not only opened outside the presence of the Patients but censored as well. All outgoing mail, except for legal mail, goes to the mailroom unsealed to be censored and sealed. Some Patients mail is never received. The facility mailroom, property department, office of Special Investigation and the clinical team can review the Patients mail prior to him receiving the mail. Any one of these departments can consider the correspondence contraband for whatever reasons and the Patient does not receive his mail, but does receive notice of undelivered mail.

65. II. Adequate Habilitation of Residents 35. Each resident shall have an adequate allowance of neat, clean, suitably fitting and seasonable clothing. [The MSOP does not provide any clothing. It is the Patients responsibility to provide clothing for himself. Patients will be punished if they give clothing to another Patient in need of clothing.

66. *Training Tasks and Labor*, (1) Residents may be required to perform vocational training tasks which do not involve the operation and maintenance of the institution, subject to a presumption that an assignment of longer than three months to any task is not a training task, provided the specific task or any change in task assignment is: (a) An integrated part of the resident's habilitation plan and approved as a habilitation activity by a Qualified [ ] Professional responsible for supervising the resident's habilitation; (b) Supervised by a staff member to oversee the habilitation aspects of the activity. (2) Residents may voluntarily engage in habilitative labor at non-program

hours for which the institution would otherwise have to pay an employee, provided the specific labor or any change in labor is: (a) An integrated part of the resident's habilitation plan and approved as a habilitation activity by a Qualified [ ] Professional responsible for supervising the resident's habilitation; (b) Supervised by a staff member to oversee the habilitation aspects of the activity; and (c) Compensated in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C. 206 as amended, 1966.

67. *Personal Housekeeping* Residents may be required to perform tasks of a personal housekeeping nature such as the making of one's own bed. Payment to residents pursuant to this paragraph shall not be applied to the costs of institutionalization. Staffing shall be sufficient so that the institution is not dependent upon the use of residents or volunteers for the care, maintenance or habilitation of other residents or for income-producing services. The institution shall formulate a written policy to protect the residents from exploitation when they are engaged in productive work. [The MSOP requires a Patient to participate in the vocational work for pay program in order to progress in treatment. Patients in addition are forced to perform building maintenance jobs to matriculate through treatment; or receive other vocational work for pay jobs.]

68. *Physical Facilities* 38. A resident has a right to a humane physical environment within the institutional facilities. These facilities shall be designed to make a positive contribution to the efficient attainment of the habilitation goals of the institution. [At

the MSOP, the psychological environment is one of hopelessness and fear. The mere fact that the only persons released are those that have died, the fact that the facility implements DOC policies and procedures that continually punish the Patients, and the fact that security and clinical staff are directed to punish as much as possible, make the environment inhumane and extremely stressful. The physical environment of the MSOP mirrors a maximum security prison. On most of the units, cameras are positioned to peer inside the Patient cells. Staff wears uniforms that resemble the DOC Officers complete with military style insignia. Metal detectors are positioned in hallways. The facility prohibits any type of decorating of the halls or cells. Patient cells are the same as any standard prison wet-cell complete with a metal toilet. All Patient property must fit into three small plastic bins stored under the bed. Additionally, Patient's deemed SPP<sup>33</sup>/SDP<sup>34</sup> have cellmates.]

69. The report by the Minnesota Office of the Legislative Auditor<sup>35</sup> clearly indicates that violations of the conditions of confinement and lack of adequate treatment are present. A question of constitutionality is present. It is the courts jurisdiction to determine whether or not, the MSOP is so punitive that it offends Due Process.

70. As a result of the Defendants above-described actions, Plaintiffs have suffered great harm and damages including but not limited to: pain and suffering, emotional distress,

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<sup>33</sup> Defined as an utter lack of control over sexual impulses.

<sup>34</sup> Defined as only enough control to plan next sexual assault.

<sup>35</sup> Id Plaintiff's Exhibit 2.

embarrassment, humiliation, past and future medical expenses, lost earnings in an amount to be determined.

## VII STATEMENT OF CLAIMS

71. On or about March, 2008, Mr. Dennis Benson resigned his position as the Deputy Commissioner of Corrections and was named Executive Director of the MSOP by the Minnesota Department of Human Services. It is unclear whether Mr. Benson has any actual expertise to operate or manage a treatment facility.

72. Since the hire of Mr. Benson, he has hired the following people from the Minnesota Department of Corrections: Kevin Moser, Gregg Carlson, Timothy Gorr, Erick Skon, and other former employees of the Department of Corrections; including clinical staff.

73. Since Mr. Benson has taken over the role as the Executive Director of the MSOP, he has restricted many of the civil rights Plaintiffs' previously enjoyed and changed to the standards of a maximum security prison facility. Examples would include the following: Unjustified Intrusion of Personal Security & Privacy, Lack of Treatment, Monopolies created through MINNCOR, for sole gain and benefit of the Minnesota Correctional system. Plaintiffs' have been punished and abused through threats; restricted visiting; restricted property; censored mail; monitored calls; restricted personal physical movement; and disciplined without due process of law.

74. Defendants in concert with Mr. Dennis Benson have and continue to violate Plaintiffs' Fourteenth Amendment Rights through violations of the First, and Fourth

Amendments of the Bill of Rights as enumerated in the Constitution of the United States of America.

75. Defendants are billing committed Patients at a group rate instead of individuals with individual treatment issues. Defendants bill each Patient approximately \$286.00 per Diem regardless of actual treatment costs. It makes no matter whether the Patient has more or less actual health care, education, or treatment needs. The costs are spread across the board. This indicates some other form of treatment and not individualized sex offender treatment; the actual reason for the involuntary civil commitment.

76. Defendants have violated the Plaintiffs' right to be billed for only the treatment they receive. Defendants further deny Patients requests for itemized billing statements to reconcile differences. Such actions violate the fair debt and trade practices.

77. Defendants have violated Plaintiffs' due process rights by implementing prison policies and rules written by the Minnesota Department of Corrections which are designed for the punishment of offenders convicted of crimes. Said policies are a substantial departure from the accepted standards of professional judgment U.S.C.A. Const. Amend. 14.

78. Defendants have violated the Plaintiffs' right to receive proper care and treatment, best adapted to rendering further supervision unnecessary. In addition, Defendants have failed to give each committed Patient the right to an individualized behavioral specific sex offender treatment plan.

79. Defendants have restricted the Plaintiffs' right to acceptable treatment practices and have instead subjected them to be experimented on through an ineffective treatment process with ineffective, undertrained therapists to thwart the release of committed Patients.

80. Due to the above, Defendants violate Plaintiffs' Fourteenth Amendment Rights through the First, Fourth Amendments

81. Defendants have violated the Plaintiffs' right to correspondence through email, uncensored mail, unmonitored telephone access and United States mail.

82. Defendants have violated the Plaintiffs' right to uninterrupted sleep.

83. Defendant's force Plaintiff's to perform cleaning of common areas as part of their treatment programming; or to be placed in the Vocational Work for Pay program.

84. Defendants have restricted the Plaintiffs' freedom of right to possess personal property for which clients purchase. All property must fit into three totes.

## **VIOLATIONS OF FOURTEENTH AMENDMENT**

85. The Fourteenth Amendment requires that civilly committed persons not be subjected to conditions that amount to punishment within the bounds of professional Judgment. Moreover, due process requires that the treatment, conditions, and duration of confinement for civilly committed persons bear some reasonable relation to the purpose for which person is committed. The MSOP fails the above miserably.

**86. Advancement/Progression in treatment:** In order to advance to sex offender specific treatment, Patients are required to perform two (2) hours per week of general maintenance/janitorial work.

**87. Vocational work for pay:** Patients are required to perform two (2) hours of general maintenance/janitorial work, to maintain a work for pay position.

**88.** Plaintiffs' are told to perform labor to advance in treatment or they will not advance.

If patient fails to take an active role in work, his chances of advancement are non-existent. Forcing patients to work under such conditions shows that treatment at MSOP in view of writer is a sham. It presents a picture of a treatment program solely in existence for profit at all levels of Patients expense.

**INADEQUATE DIET:**

**89.** The diet for residents shall provide at a minimum; the recommended daily dietary allowance as developed by the National Academy of Sciences. Menus shall be satisfying and shall provide the Recommended Daily Dietary Allowances, by the National Academy of Sciences. In developing such menus, the institution shall utilize the moderate cost food plan of the United States Department of Agriculture. The institution shall not spend less per Patients for raw food, including donated food, than the most recent per person costs of the Moderate Cost Food plan for the Northern region of the United States, as compiled by the United States Department of Agriculture, for appropriate grouping of residents, discounted for any savings which

might result from institution procurement of such food. The MSOP, food contractor (CWF)<sup>36</sup> continually shortens meals or just doesn't deliver what is on the menu. Meals are poorly prepared and in some cases handled without caution to the clients. One incident involved patients having salmonella and serving food in dining. The conditions that existed for this are a clear example to how the food contractor (CWF) continues to ignore and cause unsafe conditions for the institution. Food proportions are rationed out at a lesser degree than what menu states. Eight ounces of French fries equate to a 2-3 oz size of fries,<sup>37</sup> roast beef is course-ground to a degree that it amounts to a fourth of the weighted amount on the menu.

**EXCESSIVE RESTRICTION:**

90. The Plaintiffs' allege that conditions of confinement at the MSOP are: (1) the conditions of confinement are overly restrictive, and (2) the sex offender treatment is very little to non-existent sex offender specific treatment. Plaintiffs' point out the MSOP physical structure and layout are that of a penitentiary environment that is counter therapeutic and inappropriate for the treatment-based nature of Plaintiffs' civil confinement. Plaintiffs' also allege that the MSOP correctional counselors, also known as security counselors, impose excessive restrictions on personal movement, conduct inappropriate room and personal searches, and improperly use seclusion as a vehicle for punishment, in violation of accepted professional standards of judgment.

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<sup>36</sup> The true name of the company unknown to Plaintiffs.

<sup>37</sup> CWF equates volume & weight to be the same measurement; so Patients receive a cup of fries.

**INADEQUATE TREATMENT:**

91. Plaintiffs' allege that the treatment provided at the MSOP is constitutionally inadequate. Plaintiffs' allege that the MSOP violates accepted professional standards of judgment pertaining to informed consent and access to treatment. Specifically, Plaintiff's are required to sign a consent form that purportedly contains false and misleading statements, as well as a waiver of confidentiality that is excessively broad. Plaintiffs' charts are disclosed to the Minnesota Attorney General and the DOC if a Patient is on *supervised release*. Indeed, Plaintiffs note that since 1994, there has been no release of any Patients back to the community.

**MSOP PHYSICAL STRUCTURE AND LAYOUT:**

92. The physical structure of the MSOP is a maximum security, prison facility, rather than a treatment facility or traditional mental health facility. The conditions are, but not limited too: Numerous guards and observation posts, a central security system, continually locked-doors, small prison wet-cells that are double bunked, arbitrary cell searches, invasive body searches and significant restrictions on physical movement.

93. On July 1, 2011, the MSOP facility experienced a power failure due to storms in the area. In complex (1), the ventilation, water, and electricity were all affected by this power failure. Security staff called for all patients to lock themselves into their cells. Many patients refused to be locked into such unsanitary and inhumane conditions because staff has a history of not caring for patient's rights or well-being in

emergency situations. Many Patients with DOC time were violated for not following staff orders. Many others were disciplined for sitting outside their cells.

94. On December 1, 2011, patients were involuntarily locked into their cells for “*security reasons*,” in continuation of the previous night lockdown. Unbeknownst to patients, the MSOP planned to shut off water for that morning. Patients woke up to conditions where they had no water in sinks or toilets. Regardless of the unsanitary conditions, they were kept on lockdown with a cellmate during this time. Some were forced to eat and exist for more than two hours in a cell where another patient had used the toilet without the ability to flush the feces. This was done with malice as it was a planned event.

**RESTRICTIONS ON MOVEMENT:**

95. The restrictions on movement at the MSOP are identical to a maximum security correctional facility. Nearly all of the restrictive practices are identical to the DOC since 2008 and were implemented wholesale from established DOC policies. Room doors are locked at 9:45 pm through 6:25 am.

96. When Patients leave and return to the facility, they are strip-searched even though they are never out of security guards sight, all Plaintiffs are placed in handcuffs, leg irons, with a black box complete with waist-chain; then pushed in a wheel chair to the transport vehicle where he is placed into a small cage inside the van. No Heightened Scrutiny applies to Equal Protection claims based on violations of civilly confined

sexual offenders' liberty interest in freedom from bodily restraints and personal security, and fundamental right to access to the court. Plaintiffs' are exposed to many locked doors, and continuously on camera, or security staff.

97. Plaintiffs' are shackled to black-box restraints including: handcuffs, waste chains, leg irons & placed in a wheelchair pushed by a uniformed guard anytime they have occasion to leave the secured perimeter. This happens arbitrarily regardless of risk and even though Plaintiffs' are under constant personal surveillance and supervision by two uniformed staff. The black box is a security instrument that covers the linking chain and keyhole on handcuffs, and is intended to make it more difficult for a person to remove handcuffs. The MSOP started using them after Defendant Dennis Benson became Executive Director of the MSOP. To date there has never been an escape on transport from the MSOP.

**MILITARY/POLICE UNIFORMS/ACTIONS:**

98. Nearly all Plaintiffs' have been incarcerated for many years in prison, the requirement compelling staff to wear military police style uniforms produces an unhealthy and counter-therapeutic environment that is not conducive to a treatment setting. Plaintiffs' are civilly committed after a judge specifically ruled that the many years in prison did not help the Plaintiffs'. Security personnel could accomplish their duties wearing more casual dress that does not exasperate Plaintiffs' reality to their status of being less than other humans/citizens.

**USE OF THE HIGH SECURITY AREA:**

99. The High Security Area, known also as HSA. This is an area used to isolate patients.

The initial determination is made by a lead A-Team member. A-team staffs are the staff used to extract patients during an outburst for any number of reasons. Seclusion is used as a convenience for staff, and method of punishment to the Patients. Recent examples are: when a patient came to the desk earlier than his allowed *restriction break*, A-team was called to respond. Patient went to HSA because of this oversight of being 2 minutes early for his *restriction break*. There are too many excuses for staff to isolate patients as a convenience.

**VIOLATIONS OF FIRST AMENDMENT**

100. An amendment to the constitution that guarantees freedom of religion, freedom of speech, and freedom of the press, as well as freedom of association (the right “peacefully to assemble”) and the right to petition the government for redress of grievances. Defendants deny the Plaintiffs freedom of communication such as: a) use of the internet; b) unmonitored & unrestricted telephones; c) uncensored mail and d) other available technologies.

101. Defendants deny Patients Internet access arbitrarily whether or not such restriction is actually necessary for the safety and security of the institution and/or public on an individual basis.

102. Telephones are monitored. Patients don't have the ability to receive incoming calls. Telephones are charged at rates which violate FCC price allowances as set and regulated by the Minnesota Public Utilities Commission.
103. All mail leaving the facility and received at the facility is subject to censure. The only exception is mail going to or mail received from an attorney or government entity.
104. Patients do not have the ability to communicate with voicemail or answering machines for the purpose of leaving messages. Patients are prohibited from calling toll free numbers to conduct business with society etc...
105. The MSOP has a vested interest in getting kickbacks from the prison telephone carrier, Global Tel Link where it receives .49¢ of every US Dollar of *phone-time* purchased by Patients of the MSOP.

### **VIOLATIONS OF FOURTH AMENDMENT**

106. An Amendment to the Constitution prohibiting searches and seizures of property without search warrants and issued only upon **Probable Cause**. While Defendant's need not show probable clause, Defendant's must have a reasonable suspicion that the Patient has contraband before the invasive searches.
107. Reasonable suspicion - specific, objective information, rational inferences reasonably drawn from those facts based on experience, and individualized suspicion

(i.e., suspicion regarding the person to whom the request is made) that a threat to facility safety and security exists. Reasonable suspicion also requires the contraband, that is the subject of the search, is believed to be concealed on the person or persons, in the person's vehicle, or in the area to be searched.

108. Pat search - an inspection of a person, using the hands, which does not require the person to remove clothing, but may require the removal of shoes for inspection. Which is used without any reason other than to violate a Patient's privacy without first establishing a reasonable suspicion that the Patient possesses any contraband?
109. Defendants violate the Plaintiffs' civil rights when they conduct cell searches (*shakedowns*) arbitrarily without any reasonable suspicion of contraband. These cell-searches are called random room searches. Defendants claim that this occurs by a computer randomly selecting cell numbers to be searched.
110. Defendants violate the Plaintiffs' civil rights when property is seized as contraband even though the property is currently allowed, or has been previously allowed into the facility. Property is also seized from Patients only to compel the Patient to provide proof that the property seized belongs to the Patient it was seized from.
111. Defendants violate the Plaintiff's civil rights when Patient property is mishandled due to policy § 302.250(B). Patient property is destroyed or retained at the whim of

whatever property staff the Patient happens to deal with. Many times, personal property is destroyed after only ten days.

112. Defendants violate the Plaintiffs' civil rights when property is seized and is then destroyed if not removed from the facility within 10 days of being seized. Or when Defendants' seize property arbitrarily to question ownership; it is placed in lost and found where clients have no access. Patients must then show proof of ownership of the property to regain the property that was arbitrarily taken from the Patients' cell.
113. When a Patient is moved to the HSA, he is strip searched and then forced to wear a jump-suit prison uniform, and then be locked in a cell for a period of 2-24 hours. If a Patient declines the search, he will have his clothing cut off; a security guard then will force his hands onto patient's testicles and buttocks.
114. Defendants violate the Plaintiffs' civil rights when they compel same to submit to strip searches arbitrarily without first establishing that a reasonable suspicion of contraband exists. Patients of the MSOP have experienced their clothing forcibly cut from their bodies after being patted down and having a *metal-detecting wand* passed over their bodies.
115. Defendants violate the Plaintiffs' civil rights when they compel Plaintiffs' to submit to arbitrary strip searches when they leave and reenter the facility for any purpose. Said searches occur arbitrarily without the Defendants first establishing a

reasonable suspicion; or otherwise without the Defendant conducting an *individualized risk assessment* to warrant the invasive search.

### **CELL SEARCHES**

116. Plaintiffs' cells are arbitrarily searched for contraband. The procedure lacks the necessary standards of professional judgment for a treatment facility to justify the personal invasion of privacy. Plaintiffs allege the property being taken is not a risk to institution security; it is to deprive Patients of their personal property.

### **PAT SEARCHES**

117. Examples before a patient may leave his work in the kitchen or industry area, he is subjected to a pat search by male or female staff arbitrarily regardless of personal reasonable suspicion. Plaintiffs are also subjected to an arbitrary pat search before and after any visit even though the Patients are under constant video and personal surveillance by the MSOP guards. Plaintiff's are subject to either wand or a pat-search upon leaving the Craft-Room arbitrarily regardless of actual personal reasonable suspicion. A pat search and material search of a patient may be conducted at anytime during routine activities including, but not limited to: room return directive, movement during programmed activities, upon activation of metal detector, after contact visits, on visual observation by staff of suspicious activity.

## VIII SUMMARY OF CLAIMS

118. Defendants have subjected Plaintiffs' to arbitrary and severe restraints and restrictions to their living conditions and denial of basic needs of life that constitutes a severe restriction of liberty; have also therefore, deprived Plaintiffs' of life, liberty and property without due process of law. Defendants are required to provide Procedural and Substantive Due Process. But have failed to provide due process.
119. Defendants have deprived Plaintiff's of their right to constitutionally adequate treatment, thereby violating their constitutional right to due process.
120. Defendants have deprived Plaintiff's their due process by denying Plaintiffs' treatment that can secure a release into the community in a reasonable time period.
121. Defendants have subjected Plaintiffs' to exuberant prices relating to telephone service, food & hygiene by contracting with MINNCOR and Global Tel Link. The MSOP receives a commission from both.
122. Defendants have subjected Plaintiffs' to deprivations relating to the lack of due process in disciplinary proceedings termed: *Behavioral Expectations*. Defendants are required to provide procedural and substantive due process, but have failed to provide due process.
123. Minnesota State Statutes, rules, and policies have set forth specific and mandatory rights of Patients sufficient to create a constitutionally protected interest.

124. As a result of defendants' violations of Plaintiffs' due process rights, the class has suffered the damages described in paragraphs 119 through 139 of this Complaint, and declaratory and injunctive relief necessary to end said violations.

## **IX CAUSE OF ACTION**

125. Plaintiff's through the vehicle of title 42 U.S.C. § 1983, any other jurisdiction as mentioned in paragraph 3 through 5 above and through any other laws and/or rules this Court deems fair and appropriate , charges that the Defendants captioned above in section V. above, did commit acts under color of state law, depriving Plaintiff's of their unalienable rights, privileges and immunities secured by the Constitution and laws of the United States of America, in violation of the First & Fourth Amendments through Fourteenth Amendment protection, in both their official and personal capacities by committing the following:

### **COUNT I – VIOLATION OF THE FOURTEENTH AMENDMENT PURSUANT TO THE UNITED STATES CONSTITUTION.**

126. Plaintiff's hereby reallege and incorporate by reference, all the facts and allegations contained in paragraphs 1 through 124 of this complaint. Defendants, through the above described actions, did engage in violations pursuant to the Fourteenth Amendment of the United States Constitution; Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the

United States; nor shall any State deprived any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**COUNT II – VIOLATION OF THE FIRST AMENDMENT PURSUANT TO THE UNITED STATES CONSTITUTION.**

127. Plaintiff's hereby reallege and incorporate by reference, all the facts and allegations contained in paragraphs 1 through 124 of this complaint. Defendants, through the above described actions, did engage in violations pursuant to the First Amendment of the United States Constitution; Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably to assemble and to petition the Government for a redress of grievances.

**COUNT III – VIOLATION OF THE FOURTH AMENDMENT PURSUANT TO THE UNITED STATES CONSTITUTION.**

128. Plaintiff's hereby reallege and incorporate by reference, all the facts and allegations contained in paragraphs 1 through 124 of this complaint. Defendants, through the above described actions, did engage in violations pursuant to the Fourth Amendment of the United States Constitution; The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants will issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## **X RELIEF DEMANDED**

129. WHEREFORE Plaintiff's **PRAY** for Judgment in our favor as follows:
130. A jury trial on all issues triable by jury.
131. Granting declaratory judgment in favor of Plaintiffs by declaring Defendant's violations of Plaintiffs rights.
132. Granting injunctive relief prohibiting Defendants from continuing to violate Plaintiffs' rights, requiring Defendants to provide Plaintiffs with the standards required to meet all medical and mental health treatment, prohibiting Defendants from reading or interfering with Plaintiffs correspondence. Prohibiting Defendants from holding back patient's progression through treatment; and/or hold back vocational Work for Pay Assignments because they do not perform cleaning tasks in the common living areas. Prohibiting Defendants from locking the Patients in cells for any reason other than for safety of the patient, the facility and/or the public. Prohibiting the use of the black box, handcuffs, leg cuffs, steel chain belts. Prohibiting the use of pat searches or strip searches.
133. Awarding judgment in favor of Plaintiffs against the Defendants and each of them jointly and severally in an amount in excess of \$750,000.00 as and for compensatory damages.

134. Awarding judgment in favor of Plaintiffs against the Defendants and each of them jointly and severally in an amount in excess of \$750,000.00 as and for punitive damages.
135. Hold Defendants jointly and severally liable for Plaintiff's judgment.
136. Awarding Plaintiff's all costs and disbursements herein, and prejudgment interest.
137. Awarding Plaintiff's reasonable attorney fees pursuant to 42 U.S.C. § 1988.
138. Ordering that any monies awarded to plaintiffs' be exempt from collection by the State of Minnesota in connection with billing for cost of care.
139. Such other and further relief as the Court may deem just and proper.

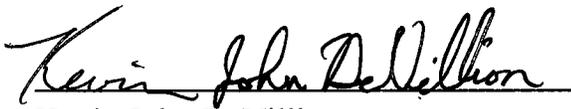
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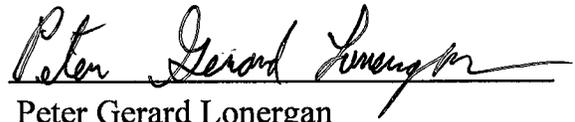
### VERIFICATION

I have read the foregoing complaint and hereby verify that the matters alleged therein are true, except as to matters alleged on information and belief, and, as to those, I believe them to be true. I certify under penalty of perjury that the foregoing is true and correct.

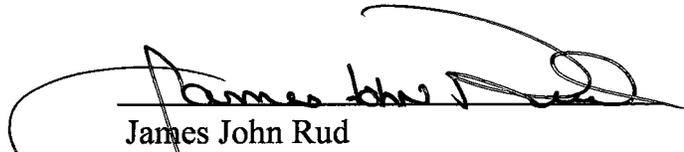
  
Kevin Scott Karsjens

  
David Leroy Gamble, Jr.

  
Kevin John DeVillion

  
Peter Gerard Lonergan

  
James Matthew Noyer, Sr.

  
James John Rud

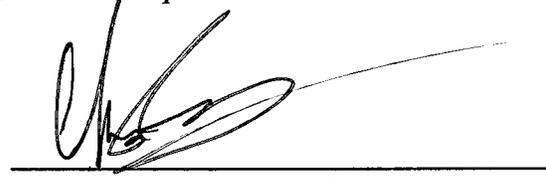
  
James Allen Barber

  
Craig Allen Bolte

  
Dennis Richard Steiner

  
Kaine Joseph Braun

  
Brian Keith Hausfeld

  
Christopher John Thuringer

  
Kenny S. Daywitt

  
Bradley Wayne Foster

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

I. (a) PLAINTIFFS Kevin Scott Karsjens, David Leroy Gamble, Jr., Kevin John DeVillion, Peter Gerard Lonergan, James Matthew Noyer, Sr., James John Rud, Dennis Richard Steiner, James Allen Barber, Craig Allen Bolte, Kaine Joseph Braun, Brian Keith Hausfield, Christopher John Thuringer, Kenneth S. Daywitt, Bradley Wayne Foster
(b) County of Residence of First listed Plaintiff: Carlton
(c) Attorney's (Firm Name, Address, and telephone Number) Pro se

DEFENDANTS Minnesota Department of Health & Human Services, Minnesota Sex Offender Program, Lucinda Jesson, Dennis Benson, Tom Lundquist, Jim Berg, Kevin Moser, Ann Zimmerman, Laurie Severson, Greg Carlson, Elizabeth Barbo, Mehadad Sabestari, Terry Kneisel, Scott Benoit, Erik Skon, Susan Johnson, Jean Seykora, John Doe and Jane Doe, whose true names are unknown
County of Residence of First listed Plaintiff: Ramsey
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
(C) Attorney's (if known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
Title 42 U.S.C. § 1983
III. citizenship of principal parties (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(PDF DEF PTF DEF)
Citizen of this State [X] 1 [X] 1
Citizen of Another State [ ] 2 [X] 2
Citizen of Subject of Foreign Country [ ] 3 [ ] 3

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans, 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise
REAL PROPERTY: 210 Land Condemnation, 220 Foreclosure, 230 Rent Lease & Ejectment, 240 Torts to Land, 245 Tort Product Liability, 290 All Other Real Property
TORTS: PERSONAL INJURY (310-360), CIVIL RIGHTS (441-446), PRISONER PETITION (510)
FORFEITURE/PENALTY: 610 Agriculture, 620 Other Food & Drug, 625 Drug Related Seizure of Property 21 USC 881, 630 Liquor Laws, 640 R.R. & Truck, 650 Airline Regulations, 660 Occupational Safety/Health, 690 Other
LABOR: 710 Fair Labor Standards, 730 Labor/Mgmt. Reporting & Disclosure Act, 740 Railway Labor Act, 790 Other Labor Litigation, 791 Employment Ret. Inc Security Act
BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157
PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 840 Trademark
SOCIAL SECURITY: 861 HIA (139ff), 862 Black Lung (923), 863 DWCDWW(405(g)), 864 SSID Title XVI, 865 RSI (405(g))
FEDERAL TAX SUITS: 870 Taxes (US Plaintiff or Defendant), 871 IRS-Third Party 26 USC 7609
OTHER STATUTES: 400 State Reappointment, 410 Antitrust, 430 Banks & Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced & Corrupt Organizations, 480 Consumer Credit, 490 Cable/Sat TV, 810 Selective Service, 850 Securities/Commodities/Exchange, 875 Customer Challenge 12 USC 3410, 890 Other Stat. Action, 891 Agriculture Acts, 892 Economic Stabilization Act, 893 Environment Matters, 894 Energy Alloc. Act, 895 Freedom of Information Act, 900 Appeal of Fee Determination Under Equal Access to Justice, 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
[X] 1 Original [ ] 2 Removed From State Court [ ] 3 Remanded From Appellate Court [ ] 4 Reinstated or Reopened [ ] 5 Transferred From Another District [ ] 6 Multidistrict Litigation [ ] Appeal to District Judge From Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity).
Brief description of cause: Patients of the Minnesota Sex Offender Program are suing Defendants over conditions of captivity and inadequate treatment culminating in many violations of due process, First & Fourth Amendment rights.

VII. REQUESTED IN COMPLAINT:
[X] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$750,000.00 compensatory & \$750,000.00 punitive per class member
CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [ ] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: December 15, 2011 SIGNATURE OF ATTORNEY OF RECORD: Kevin S. Karsjens

FOR OFFICE USE ONLY
RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_
MAG. JUDGE U.S. DISTRICT COURT ST. PAUL
DEC 21 2011

Kevin S. Karsjens  
1111 Highway 73  
Moose Lake, MN 55767

December 15, 2011

United States District Court,  
Fourth Division  
100 Federal Building  
316 North Robert Street  
St. Paul, MN 55101

**RECEIVED**  
DEC 21 2011  
CLERK, U.S. DISTRICT COURT  
ST. PAUL, MINNESOTA

Re: Commencement of Civil Action

To the Clerk of Court:

Please find enclosed for filing one (1) original of the following documents: Civil Complaint pursuant to Title 42 U.S.C. § 1983 w/Affidavit-Exhibits.

Please take notice that a Civil Cover Sheet; 14 Affidavits to proceed in forma pauperis; Motion to Appoint Counsel; Motion for TRO/Preliminary Injunction; Proposed Order; Memorandum of Law w/Affidavits-Exhibits was sent in a separate envelope but the same box on this date marked "Envelope 1 of 2 & Envelope 2 of 2."

Thank you for your courtesies.

Truly yours,



Kevin S. Karsjens

cc: file

encl.

**SCANNED**  
DEC 21 2011  
U.S. DISTRICT COURT ST. PAUL  
*JK*