

PC-UT-003-001

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in cooperation with
THE ACLU OF UTAH FOUNDATION, INC.

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, CENTRAL DIVISION

SANDRA HENRY, on behalf of)
herself and others similarly)
situated,)
)
Plaintiff,)
)
v.)
)
GARY W. DeLAND, Director, Utah)
Department of Corrections;)
GERALD COOK, Director of Institu-)
tional Operations Division, Utah)
Department of Corrections; ELDON)
BARNES, JR., Warden, Utah State)
Prison; DANIEL LATHAM, Bureau)
Chief of Support Services, Utah)
State Prison; BRUCE EGAN,)
Acting Director of Medical)
Facilities, Utah State Prison;)
BLEN FREESTONE, Acting Assistant)
Director of Medical Facilities,)
Utah State Prison)
)
Defendants.)
)

COMPLAINT

Civil No. _____

Plaintiff alleges:

I. PRELIMINARY STATEMENT

1. This civil rights action is brought by Plaintiff on her own behalf and on behalf of all inmates who are confined and who may be confined in the future at the Utah State Penitentiary at Draper, Utah [the "Prison"]. Because of their incarceration at the Prison, Plaintiff and the class she represents [referred to sometimes as the "Inmates"] are dependent upon Defendants to provide them with medical and mental health care. This action seeks 1) a declaration by this Court that conditions at the Prison are unconstitutional under the Eighth and Eleventh Amendments to the United States Constitution because inadequate medical and mental health care is provided to the Inmates, and 2) injunctive relief ordering Defendants to take immediate and continuing steps to remedy the constitutional inadequacies in medical and mental health care provided at the Prison, or cease incarcerating Inmates at the Prison.

II. JURISDICTION AND VENUE

2. This action is brought under 42 U.S.C. § 1983 and under the Eighth and Fourteenth Amendments to the United States Constitution. Jurisdiction of this Court is invoked under 28 U.S.C. § 1343.

3. Venue is proper under 28 U.S.C. § 1391. Each Defendant resides in the State of Utah and each claim for relief arises in this District.

III. PARTIES

A. Plaintiff

4. Plaintiff Sandra Henry is presently an Inmate at the Prison and is deprived of adequate medical and mental health care in the manner described in this Complaint. Throughout her incarceration at the Prison she has been denied constitutionally adequate care for her serious medical needs.

B. Class Action Allegations

5. This is a class action under Rule 23 (b)(1)(A) and (b)(2) of the Federal Rules of Civil Procedure. Plaintiff is a representative party of the class which is composed of all persons presently confined at the Prison or who may be so confined in the future.

6. The class is so numerous that joinder of all members is impractical. Approximately 2,400 Inmates are presently incarcerated at the Prison.

7. Questions of law and fact presented by Plaintiff's claims are common to the class in that all Inmates are deprived of adequate medical and mental health care in the manner described in this Complaint.

8. Plaintiff's claims are typical of the claims of all class members.

9. Plaintiff is represented by competent counsel who will fairly and adequately protect the interests of the class.

10. The prosecution of separate actions against defendants would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for Defendants.

11. Defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

12. Although many of the members of the class have claims for damages against Defendants and others, these individual damage claims are not appropriate to bring in this action. Damage claims would inject individual questions of law and fact into this litigation, common questions would not predominate, individual class members would lose their ability to control the prosecution of their claims, and this action would become unreasonably difficult to manage.

C. Defendants

13. Defendant Gary W. DeLand is the Director of the Department of Corrections of the State of Utah. He is responsible for the management, supervision and control of the penal, correctional, and reformatory institutions operated by the State. Defendant DeLand has the power to authorize expenditures within the Prison and to determine how the budget for the Prison and its medical facilities will be spent. Defendant DeLand is responsible for determining facility needs and directs the planning, design, and construction of new facilities. He gives final approval for recruiting, selection, and hiring decisions. Defendant DeLand ultimately determines the level of medical care provided at the Prison. He is aware of the constitutional inadequacies in the medical and mental health care at the Prison but refuses to correct those inadequacies. Defendant DeLand is ultimately responsible for the continuing incarceration of the Inmates under conditions that are unconstitutional under the Eighth and Fourteenth Amendments to the United States Constitution.

14. Defendant Gerald Cook is the Director of Institutional Operations Division. He is responsible for carrying out the mission, goals, policies, and procedures of the Department of Corrections. Defendant Cook supervises the Bureau Chief for

Support Services and the Warden of the Prison. He is responsible for all operations within the Prison, including the operations of the Medical Department. He is aware of the Constitutional inadequacies in the medical and mental health care provided to the inmates but refuses to correct those inadequacies.

15. Defendant Eldon Barnes, Jr. is the Warden of the Prison. He directly supervises the Prison, including its medical facilities. Defendant Barnes is responsible for the overall safety of the Inmates at the Prison. Defendant Barnes is directly responsible for the continuing incarceration of the Inmates under conditions that are unconstitutional. He is aware of the constitutional inadequacies in the medical and mental health care provided to the Inmates but continues to incarcerate the Inmates at the Prison under those conditions.

16. Defendant Daniel Latham is the Bureau Chief of Support Services within the Prison. He assists in budget planning for the Prison. Defendant Latham initiates and oversees the filling of vacancies within support services, including the medical staff. He directly supervises the Medical Director and is responsible for the level of care provided by the medical department. He is aware of the Constitutional inadequacies in the medical and mental health care provided to the inmates but refuses to correct those inadequacies.

17. Defendant Bruce Egan is the Acting Director of Medical Facilities at the Prison, and Defendant Blen Freestone is the Acting Assistant Director of Medical Facilities. Defendants Egan and Freestone supervise the Prison's medical staff and facilities. They are directly responsible for the level of medical and mental health care provided at the Prison and are directly responsible for the inadequate staffing, the lack of resources and facilities, and the defective protocols and procedures that are described in this complaint.

IV. GENERAL ALLEGATIONS

18. Defendants fail to provide minimally adequate medical and mental health care to the Inmates incarcerated at the Prison.

19. Conditions at the Prison fail to meet any of the following minimum standards for the provision of medical and mental health care in correctional facilities: (1) Federal Standards for Corrections (1978), drafted by the United States Department of Justice ["Federal Standards"], (2) Standards for Health Services in Correctional Institutions (N. Dubler 2d ed. 1986), published by the American Public Health Association ["APHA Standards"], and (3) Manual of Correctional Standards (1966), prepared by the American Correctional Association ["ACA Standards"].

20. Defendants are aware of the deficiencies in the medical and mental health care they provide.

21. On August 31, 1979, the State of Utah entered into a stipulation and settlement agreement with certain Inmates in Civil Action Nos. C-75-220, C-75-377, C-75-410, C-75-411, C-76-191, C-76-253, entitled Balderas v. Matheson. In settlement of that action, Defendants agreed that the Federal Standards and the ACA Standards were appropriate to determine the legality and effectiveness of Defendants' operation of the Prison. Notwithstanding that recognition and agreement, Defendants have failed to follow these standards in delivering medical and mental health services to Inmates.

22. The Department of Corrections hired Bonnie Norman, RN, MPH, a Correctional Health Care Consultant, to examine prison medical conditions. On August 31, 1988, Ms. Norman issued a report listing 49 major recommendations to improve health care at the Prison. Today, medical and mental health care at the Prison remains essentially unchanged.

23. As evidenced by the conditions described in this complaint, Defendants, who are responsible for medical conditions at the Prison, are deliberately indifferent to serious medical and mental health needs of the Inmates. That deliberate indifference constitutes unnecessary and wanton infliction of pain

without any penological purpose, in violation of the Eighth and Fourteenth Amendments to the United States Constitution.

Inadequate Medical Staffing and Facilities

24. Defendants have failed to create an adequate number of medical staff positions for qualified medical personnel and Defendants have failed to fill existing positions. These shortages in medical staff make it impossible for the Prison to meet the serious medical and mental health needs of Inmates. For example:

a. To treat the entire Prison population of approximately 2,400 Inmates, Defendants employ two part-time physicians who in total work approximately 15-20 hours per week at the Prison. These physicians are augmented by only one nurse practitioner and one physicians' assistant. This level of physician staffing is grossly inadequate to meet the serious medical needs of the Inmates.

b. As a result of inadequate physician staffing, Inmates receive much of their direct medical treatment from non-physicians. State statutes and regulatory rules require that any medical treatment rendered by non-physicians shall be consistent with standard operating procedures, protocols for specific

conditions, and standing and direct orders. Defendants fail to comply with state law and do not follow these Federal Standards.

c. Defendants employ only five nurses at the Prison who are expected to provide around-the-clock coverage seven days a week. These nurses are asked to conduct sick calls two times daily, provide treatment, administer exams, conduct doctor lines, handle emergencies, and arrange for transfers and special services. Due to shift rotations, this level of nurse staffing allows for a maximum of two nurses on duty for the entire Prison at any one time, and more typically only one nurse is on duty. Sometimes on weekends no nurse is on duty. It is impossible for one or two nurses on duty at any given time to meet the serious medical needs of the Inmates.

d. Defendants have filled the remaining positions with one student physicians' assistant, and thirteen unlicensed medical technicians. These unlicensed staff people routinely make decisions and attempt to render medical care which is far beyond their limited abilities.

e. The Prison's shortage of authorized positions for qualified medical personnel is compounded by staff recruiting problems. Because of poor Prison working conditions, poor levels of pay, and overwork, the Prison does not have enough qualified medical personnel. Available staff positions go unfilled, further reducing the quality of care Inmates receive.

25. In response to the shortage of medical staff and trained specialists at the Prison, Defendants sometimes send Inmates to the University of Utah Medical Center ["UUMC"] for care and treatment the Prison cannot provide. However, access to UUMC services is severely restricted. Furthermore, the Inmates are often denied the care and treatment which UUMC physicians recommend or prescribe, in deliberate indifference to the serious medical needs of the Inmates.

26. The Prison has inadequate staffing to provide for transportation of Inmates to UUMC. Inmates regularly miss scheduled appointments because the Prison is unable to transport them. When transportation is provided it is often untimely, resulting in more missed appointments. Ill Inmates are often not provided with jackets during transportation in winter months, leaving Inmates with the difficult

choice of forgoing medical treatment or risking the adverse health effects of a lengthy ride with inadequate means to stay warm.

27. As a result of the medical staff shortage, Inmates receive delayed attention to their serious medical needs and in some cases the Inmates' serious medical needs are completely ignored. For example:

a. Inmate ST suffered a gunshot wound just before coming to Prison three years ago. A 22-caliber bullet went into his right ear, traveled through his head and settled in his left cheek. Pus has been draining from ST's right ear for the three years he has been in the Prison. The other Inmates can smell the drainage. ST's right eye won't close when he sleeps and he is gradually losing his sight in the right eye. A note in his medical chart dated June 24, 1988 indicates that some type of surgery should be considered. Yet, ST was not sent to the UUMC for possible surgery until November 30, 1989.

b. Inmate JE fractured his thumb while playing basketball. The fracture required open surgery to align the bones and to hold the bones in place with a temporary pin. After removing the pin, doctors at the

University of Utah Medical Center discovered a tendon had become affixed to the bone. The doctors indicated that surgery could "lift" the tendon from the bone. On October 4, 1989, a Prison physician refused JE the surgery since the situation was not life threatening, and the surgery was deemed "elective". JE is now unable to bend his thumb.

Sick Call and Medical Emergencies

28. Inmates at the Prison are given no guaranteed access to medical professionals. All Inmates must first be screened at a sick call and are referred for medical treatment only if the staff person conducting sick call thinks it appropriate.

29. Defendants fail to provide prompt attention to medical emergencies and fail to provide adequate emergency medical services. The Prison does not provide safe and timely emergency services twenty-four hours a day on a par with accepted contemporary national standards and as required by APHA Standards. The condition of sick and injured Inmates is allowed to deteriorate until medical problems become emergencies, and emergencies become life-threatening. For example:

a. Inmate AM injured his face during Prison work and his nose hemorrhaged severely. Prison personnel applied pressure on the nose for four hours as the sole method of treatment. Three days later, AM's nose again started to bleed profusely. Once again he was given only first-aid treatment for about four hours. This treatment did not stop the hemorrhage and AM required four days of hospitalization at the University of Utah Medical Center. Not only does such neglect inflict unnecessary pain on the Inmates, it necessitates further care that would have been unnecessary if the condition were promptly treated.

b. Inmate HA developed severe abdominal pains and vomiting caused by gallstones on June 17, 1989. HA was not seen by a doctor until June 23, 1989. He was not tested for gallstones until June 28, 1989, and did not have gallbladder surgery until July 18, 1989, despite continuing severe pain and vomiting for a period of approximately one month.

c. Inmate BR suffered abdominal pain and swelling from a peptic ulcer for about eighteen months. He consulted the Prison medical department on June 21, 1988, complaining of right upper quadrant pain, and was

prescribed Sudafed (a cold medicine). BR was told that his condition was most likely chronic hepatitis. BR, like all Inmates, was allowed to see a physician only when a non-physician so recommended. Nevertheless, he continued to complain to the Prison medical department, and was finally sent to the University of Utah Medical Center for evaluation. Riopan (an ulcer medication) was prescribed for the first time on May 8, 1989, over one year from the first onset of symptoms.

d. Inmate TE has a heart condition. Another Inmate witnessed TE suffering an apparent heart attack. The unlicensed medical technician who responded did not start oxygen or an IV, was not prepared to do CPR, and left TE for upwards of thirty minutes during the emergency. Additionally, TE was allowed to walk to the stretcher and was carried down several flights of stairs without being strapped to the stretcher. This handling of the emergency represents a gross deviation from standards of care typically practiced by emergency medical technicians.

Failure to Treat Chronic Medical Conditions

30. Defendants fail to provide adequate medical care for chronic conditions. Chronic conditions are left untreated until they become emergencies or until an Inmate's health has deteriorated beyond recovery. This failure constitutes a deliberate indifference to the serious medical needs of Inmates. For example:

a. Inmate UL complained that he was losing vision in his right eye over a period of several months. UL was told that he needed to sign up on a list to see the eye doctor and that an appointment would take several months. UL had cataracts of both eyes and needed surgery on both eyes.

b. Inmate CA is a diabetic. The Prison refused to give CA a special diet necessary for his diabetes despite recommendations by the prison dietician. The Prison has not adjusted CA's insulin dose and does not give him his insulin on time so that his diabetes remains in poor control. In three years at the Prison, CA recalls having his blood sugar tested only three or four times. The Prison refuses to give him adequate urine and blood testing equipment necessary for him to monitor his diabetic condition. The

Prison has not evaluated his diabetic status in approximately fifteen months. The Prison does not provide diabetics with sugar for emergency use, and instead requires Inmates to buy their own emergency supply (if they have the funds). Guards are not permitted to administer sugar to diabetics in insulin shock even though diabetics cannot administer sugar to themselves during this emergency and personnel with medical training may not be close at hand. CA has tried to get moved closer to the medical facility, but the Prison refuses to issue a medical override allowing him to do so.

c. Plaintiff Sandra Henry, an HIV-positive Inmate, had a T4 lymphocyte count of 396 on September 24, 1989. On June 7, 1989, her T4 lymphocyte count was 150. Federal Standards established by the Health and Human Services and guidelines promulgated by the Center for Disease Control mandate that Henry receive AZT in order to retard the disease and to prevent complications. Henry repeatedly requested AZT for her HIV-positive condition. Her requests were denied. Henry attempted to use the grievance procedure to obtain this necessary treatment. Her attempts were

unsuccessful. Henry was recently seen by a physician at UUMC who was shocked to learn that she had been unable to obtain AZT treatment. He has taken it upon himself to personally intervene on her behalf. Through his efforts she has been receiving AZT since early December.

d. OL is an Inmate with AIDS. His T4 cell lymphocyte count was 278 as of September 21, 1989. He is receiving no treatment for his AIDS condition although he has requested that treatment, and although current guidelines call for AZT to retard the disease and to prevent complications. OL has tried to get dental care, but the dentist refused to render dental care since that care might result in bleeding, even though the dentist was wearing four sets of gloves and a full plastic or rubber apron. Such hysteria is unwarranted under the circumstances and deviates grossly from community standards for the treatment of dental patients with AIDS. Additionally, OL suffers from rectal warts. The Prison has treated these warts only with "acid" applied to the rectal area and has denied OL proper medical treatment for his wart condition.

Failure to Control Infectious Diseases

31. Defendants do not perform tests to detect communicable diseases and do not immunize or vaccinate new Inmates upon their arrival at the Prison. Defendants have failed to develop a comprehensive infectious disease plan to prevent and control the spread of infectious diseases within the Prison population.

32. The Federal Standards require that each new Inmate receive laboratory and diagnostic tests to detect communicable diseases including venereal diseases and tuberculosis within ten working days of their arrival at the Prison. The ACA Standards require that all new arrivals receive needed immunizations and vaccinations. The Norman Report recommended instituting an infectious disease plan.

33. Defendants' failure to identify and treat infectious diseases among Inmates according to a comprehensive infectious disease plan not only jeopardizes the health of Inmates with infectious diseases, but exposes the remainder of the Prison population to the spread of infectious diseases. This failure constitutes a deliberate indifference to the serious health needs of all Inmates.

Inadequate Dental Care

34. Defendants employ only two part-time dentists for the entire Prison population. Inmates receive no dental screening or routine dental hygiene upon admission to the Prison and Inmates must wait an average of eight to ten weeks to receive non-emergency dental care. The Federal Standards require that dental screening be provided within fourteen days of admission, dental hygiene services be provided within thirty days of admission, and dental examinations be provided within three months of admission to the Prison. The APHA Standards require that Inmates be examined at least annually.

35. The Inmates' serious dental needs receive delayed attention and are sometimes ignored. As an example, Inmate HA began suffering from an impacted wisdom tooth in January 1989. HA, other inmates, his supervisor, and Prison guards all sought to get him a dental appointment. The pain and swelling became so severe that HA could not eat, close his mouth, or sleep at night. In March, HA finally attempted to alleviate the swelling himself with an X-Acto knife. Finally, on April 7, HA was seen by a dentist. The tooth was extracted on August 9, more than half a year after the onset of the condition.

Inadequate Pharmacy Services

36. Physicians at the University of Utah Medical Center frequently prescribe medications for Inmates placed under their care. In many cases, Inmates are not given those medications at the Prison. Inmates are told that the Prison does not have that particular drug or that the drug will be placed on order, even when the Prison pharmacy has the same drug under a different brand name. UUMC physicians are not notified by the Prison pharmacy when a drug UUMC physicians prescribe is not available and, thus, they cannot prescribe a substitute drug. The Norman Report documented numerous other deficiencies in the operation of the pharmacy and in the administration of pharmaceuticals. Defendants have not corrected these deficiencies.

37. Pharmacy services are so inadequate that they constitute deliberate indifference to the serious medical and mental health needs of Inmates. For example:

a. Inmate BI is an epileptic who requires specific medication to control his seizures. The Prison told him that his prescribed medication was not allowed and the Prison placed him on a different drug. Although monthly blood checks are required to determine whether the anti-seizure drug is present at an

effective level in the bloodstream, the Prison gave BI no such tests in the Prison. BI suffered a seizure and injured his head. The Prison disciplined him for not taking his medication and ordered him to pay restitution for his medical expenses. Later test results showed that BI was taking the substitute drug at its proper dosage at the time of the seizure and that the substitute drug was not adequate to control his seizures. Not only did BI receive inadequate prescription drug treatment for his epileptic condition, but he was disciplined by Prison authorities for a medical condition beyond his control.

b. Inmate TI has severe asthma. He complains that his medication level has systematically been reduced to the point that he suffers severe asthmatic attacks. Lack of necessary medication has caused several life-threatening asthma attacks requiring emergency helicopter transports to the University of Utah Medical Center.

c. Inmate UL had cataract surgery on both eyes. His physician at the University of Utah Medical Center prescribed antibiotic and steroid eye drops which were "very important" to his recovery. In order

to be certain that UL did not go without his prescribed medication, the UUMC physician sent him back to the Prison with a small sample of the eye drops, and a prescription for those eye drops. UL repeatedly requested the prescription for eye drops be filled. He soon ran out of his sample supply and was denied an additional supply by the Prison. As a direct result of UL's inability to obtain needed medication, he has been referred back to the UUMC Ophthalmology Clinic to determine if further surgery is necessary.

Inadequate Medical Grievance Procedures

38. Defendants force Inmates to use the lengthy and cumbersome prison grievance procedure to address unmet medical and mental health needs, even when these unmet needs are serious and potentially life-threatening. Most grievances are reviewed only by the Prison medical staff themselves or by non-medical personnel. The Prison takes up to 14 days to review grievances at level 1 (informal), up to 21 days each at levels 2 (formal) and 3 (Inspector General), and up to 10 days at level 4 (Administrative Law Judge). Assuming the Inmate appeals instantly at each level, the full appeal process could be as much as 70 days, even when the grievance concerns an Inmate's need for immediate

medical or mental health care. Lack of an adequate medical grievance procedure constitutes a deliberate indifference to the Inmates' serious medical needs.

Lack of Initial Medical Screening

39. Although current Prison policy supposedly requires a complete health appraisal within thirty days after an Inmate is admitted to the general Prison population, Defendants have allowed the Prison staff to fall approximately one year behind in performing these health appraisals. Federal Standards require that an initial health screening be done before an Inmate is placed in the general prison population and that a complete health appraisal be performed within ten working days. The Norman Report recommends a receiving (intake) screening. The failure to perform an intake screening exam and initial health appraisal constitutes a deliberate indifference to the serious medical needs of the Inmates. For example:

Inmate CA indicated that he was diabetic on a health history form he filled out when he entered the Prison. He was not seen by a physician for this condition and no provision was made to ascertain his insulin needs or provide him with insulin. As a result, CA

suffered a life threatening episode of diabetic coma and required emergency transport to UUMC.

Inadequate Mental Health Staffing and Facilities

40. Defendants have failed to create an adequate number of positions for qualified mental health personnel and have failed to fill the positions that are available. Between twenty-five percent and thirty percent of the entire Prison population is estimated to have some form of mental illness; however, only one psychiatrist works part-time to supervise the mental health treatment of all Inmates. Inmates receive most mental health counseling (when available at all) from social workers rather than psychologists or psychiatrists. These social workers have other obligations that conflict with their role as therapists. As a result, patient/therapist confidentiality is breached. Moreover, the nature of these conflicting roles prevents social workers from providing individual therapy. Defendants' failure to hire an adequate number of qualified mental health personnel constitutes a deliberate indifference to the serious mental health needs of Inmates.

41. Defendants fail to provide adequate facilities to house Inmates needing mental health care. This constitutes deliberate indifference to the serious mental

health needs of Inmates. The Federal Standards require that a separate facility for all inmates with severe emotional disturbances be provided for treatment. Defendants provide only: (1) a 6-bed infirmary to serve the needs of the acutely mentally ill, (2) a 125-bed special services dormitory and (3) the Forensics Unit at the Utah State Hospital. Only twenty beds are allocated for individuals with mental illness at the Special Services Dormitory. As a result, Inmates with severe emotional disturbances are housed in the general population.

42. The Federal Standards require that all inmates have non-emergency access to mental health services, that inmates must be seen by a mental health professional no later than forty-eight hours after a request, and that a psychiatrist must see the inmates he is treating at least every two weeks when they have become stable on their medications.

43. The following examples illustrate the gross deficiencies in the mental health care Defendants provide at the Prison:

a. Inmate SO suffers from paranoid schizophrenia. He experiences hallucinations and has exhibited bizarre behavior. He has attempted suicide. SO

is currently receiving dosages of psychotropic medications consisting of Haldol, Thorazine, and Tegretol. He has not seen a psychiatrist in the four months since he was moved from the Special Services Dormitory to the general population. During these last four months, he has received no therapy for his schizophrenia.

b. Inmate LO suffers from major depression and pedophilia. He was transferred in September from the Utah State Hospital to the Prison. While at the hospital, LO received individual therapy, group therapy, and psychotropic medications. His condition improved significantly during the two years spent at the hospital. In the past three months at the Prison, however, LO's condition has deteriorated. LO has become severely depressed. He isolates himself and withdraws from all contact with people at the Prison. He requested to see a psychiatrist in order to have his medications reviewed because the medications are causing side-effects, but has not seen a psychiatrist. He requested mental health services through the ReVamp program offered at the Special Services Dormitory immediately upon entering the Prison, yet has never received a response. In his three months at the

Prison, LO has received no counseling services to assist him with his depression and pedophilia.

c. Inmate MO suffers from drug and alcohol abuse and schizophrenia. He resides currently at the Special Services Dormitory. Although he does see a psychiatrist occasionally, these visits only last on the average four to five minutes. MO is never able to complete his conversations with the psychiatrist during these short intervals.

d. Inmate DO suffers from dysphoria and dysthymia. He currently resides at the Special Services Dormitory. He receives group therapy only twice each month. This therapy is inadequate, often consisting only of playing basketball, pasting pictures, and talking about "getting along better with other people."

Mental Health Emergencies/Suicide Prevention

44. Because Defendants fail to provide adequate counseling, the mental health of Inmates is allowed to deteriorate. Crisis intervention is the primary method of mental health care. The APHA Standards call for direct treatment including suicide prevention for all Inmates with mental health problems. The Norman Report documented many deficiencies in the Prison's mental health care program.

Despite the Federal Standards, the APHA Standards and the Norman Report recommendations, Defendants have not improved mental health services they provide in crisis situations. This constitutes deliberate indifference to the serious mental health needs of Inmates.

45. Examples of the gross inadequacies include:

a. Inmate SO suffers from paranoid schizophrenia. During the time he resided at the Special Services Dormitory, he became so despondent that he attempted suicide by drinking a caustic liquid mixed with Coke. His only treatment was "group therapy" twice each month which often consisted only of playing basketball and pasting pictures.

b. Inmate HO was transferred from the State Hospital to the Prison in June 1989. Since then he has attempted suicide four times, by hanging himself, by slashing his wrists twice, and by attempted electrocution. He has spent the last six months at the Prison Infirmary (not the Special Services Dormitory) and has received no counseling.

Inadequate Chronic Mental Health Care

46. Inmates with chronic mental health problems receive no treatment unless they reside in the Special

Services Dormitory or are sent to the Forensics Unit at the Utah State Hospital. Federal Standards require evaluation, treatment, a treatment plan written by a doctor, training of all Prison personnel in recognizing symptoms of mental illness, nonemergency access to mental health services, and close supervision of mentally ill or retarded Inmates. Failure to provide adequate evaluation, treatment and supervision constitutes a deliberate indifference to the serious mental health needs of chronically mentally ill or retarded Inmates. Examples of these deficiencies include:

a. Inmate LO resides in the general population. He suffers from depression and pedophilia and receives no therapy.

b. Inmate SO resides in the general population. He suffers from paranoid schizophrenia and receives no therapy.

c. Inmate GA resides in the general population. He has been diagnosed as suffering from paranoid schizophrenia, manic depression, and multiple personality disorder. He currently receives no therapy.

Inadequate Mental Health Screening

47. Defendants refuse to conduct voluntary psychological tests on new inmates and perform only a mental

health history. Mental illness and mental health problems are not adequately identified and evaluated when an inmate enters the Prison. The Federal Standards require a psychiatric evaluation to be done by qualified prison personnel upon all inmates when they are admitted to a prison. The Norman report concurs that such evaluations must be done. Defendants' failure to conduct these examinations constitutes deliberate indifference to the serious mental health needs of Inmates.

Mental Health Treatment As A Luxury

48. Defendants regard mental health treatment as a reward and a luxury. Defendants use denial of mental health care as a form of punishment. Inmates who are considered a management problem are not allowed to receive mental health treatment. If Inmates violate the rules of the Special Services Dormitory, they are placed back into the general population. Yet by the very nature of their illnesses, they may not be able to follow rules. For example:

Inmate SO suffers from schizophrenia. He was removed from the Special Services Dormitory into the general population for exhibiting aggression and a poor attitude. He now receives no treatment. This failure to provide mental health treatment for all individuals

with mental illness constitutes a deliberate indifference to serious mental health needs.

Brutality Towards Mentally Ill Inmates

49. Prison guards physically mistreat and brutalize Inmates who are suicidal or mentally ill, twisting their arms, "tazoring" their bodies with electric prods, and placing them in "strip cells" without clothes, blankets or other source of warmth. Defendants are aware of these barbarous practices but refuse to correct them.

CLAIM FOR RELIEF

42 U.S.C. § 1983

50. Paragraphs 1 through 49 are incorporated herein by reference.

51. Defendants, who are acting under color of state law, have deliberately denied and have shown deliberate indifference to Plaintiff's and other Inmates' serious medical and mental health needs. Defendants' conduct constitutes cruel and unusual punishment. In its worst cases, it constitutes physical torture. In all cases it constitutes the wanton infliction of unnecessary pain without penological purpose. Defendants' conduct violates the Eighth and Fourteenth Amendments to the United States Constitution.

VI. PRAYER

Plaintiff prays for the following relief:

1. That the Court certify, pursuant to Rule 23 of the Federal Rules of Civil Procedure, that this action is a proper class action and that Plaintiff is a proper class representative;

2. That the Court enter a declaratory judgment pursuant to Rule 57 of the Federal Rules of Civil Procedure that the conditions at the Prison resulting from inadequate medical and mental health care constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution;

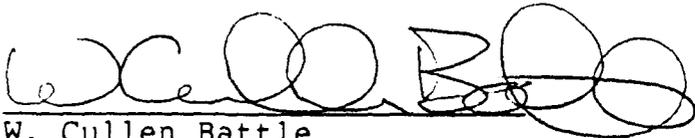
3. That the Court enter a permanent injunction ordering defendants, their agents, employees and other persons in concert with them to take immediate and continuing steps to remedy the constitutional inadequacies in the medical and mental health care provided at the Prison, or cease incarcerating Inmates at the Prison;

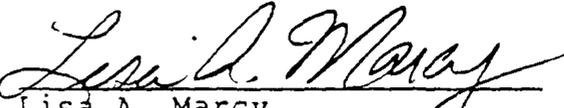
4. That the Court appoint a Special Master to determine what specific steps Defendants must take to create a constitutionally adequate medical and mental health care system;

5. That Plaintiff be awarded her costs and attorneys' fees pursuant to 28 U.S.C. § 1988 (4); and

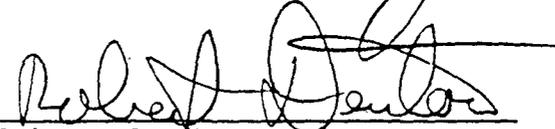
6. That the Court grant such other and further relief as it deems just and proper.

DATED this 18th day of December, 1989.

By 
W. Cullen Battle
FABIAN & CLENDENIN
A Professional Corporation

By 
Lisa A. Marcy

and

By 
Robert B. Denton
LEGAL CENTER FOR THE
HANDICAPPED

Plaintiff's Address:
P. O. Box 250
Draper, UT 84020
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