



built-in security lighting, guards are able to effectively conduct night security checks using flashlights.

3. Constant exposure to light decreases sleep quality in several ways. First, constant exposure to light early in the sleep cycle delays the timing of the circadian clock, making it difficult to fall asleep. Second, exposure to light later in the sleep cycle will advance the circadian clock, causing a person to wake up sooner. In both situations, production of melatonin by the brain is suppressed.
4. Constant illumination leads to sleep deprivation, which has the short term effect of exacerbating conditions such as mood disorders and migraines, and generally lowering resistance to colds, flu, stress-related ailments, and causing weight gain. Research also shows that sleep deprivation results in cognitive problems, memory deficits, confusion and anxiety, and it intensifies psychiatric symptoms.
5. The scientific literature suggest that the long term effects of decreased melatonin production and sleep deprivation include risk factors for cardiovascular disease, gastrointestinal disorders, and certain types of cancer.

#### **JURISDICTION AND VENUE**

6. This action arises under 42 U.S.C. § 1983 to redress the deprivation under color of state law of right, privileges, and immunities secured by the Constitution of the United States. The rights sought to be redressed are guaranteed by the Eighth and the Fourteenth Amendments to the United States Constitution.. The Court has federal question jurisdiction over this controversy under 28 U.S.C. §§1331 and 1343.
7. This Court has supplemental jurisdiction to hear Plaintiff's related state claim brought pursuant to Chapter 1, Article 18 of the Vermont Constitution under 28 U.S.C. § 1367.

8. Venue is proper in the District of Vermont under 28 U.S.C. §1391 because the Plaintiffs are incarcerated there, and constant illumination is occurring in Vermont prisons.

### **PARTIES**

9. Plaintiffs David McGee, Jacob Sexton, Richard Pahl, Jose Torres, Kevin Kimber, Daniel Muir, and James Anderson are prisoners in the custody of the Vermont Department of Corrections who are currently incarcerated at either Northern State Correctional Facility or Southern State Correctional Facility, where all cells are constantly illuminated.<sup>2</sup>
10. Defendant Robert Hofmann is the Commissioner of the Vermont Department of Corrections. As Commissioner, Hofmann is responsible for Vermont DOC's daily functioning and administration. He is sued in his official capacity.

### **FACTUAL ALLEGATIONS**

#### **Cell Lighting**

11. According to Defendant, all cells at Southern State Correctional Facility and Northern State Correctional Facility have built-in security lighting. The security lighting system consists of fixtures mounted to the ceilings of the cells that use one fluorescent light bulb that is between 5 and 8 watts. The light output of these bulbs is approximately 375-425 lumens, respectively. A 5-watt compact fluorescent bulb provides a "similar light level" to a 25-watt incandescent bulb. An 8-watt fluorescent bulb is the approximate equivalent to a 45-watt bulb.

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<sup>2</sup>Named plaintiff Jacob Sexton is currently incarcerated in a private facility operated by the Corrections Corporation of America ("CCA") by contract with the Vermont Department of Corrections. Kevin Kimber has been transferred to a CCA facility in Oklahoma. In Document 188, Magistrate Judge's Report and Recommendation, Magistrate Judge Niedermeier addressed Defendants' complaints regarding mootness, acknowledging that "[t]he difficulty in a case such as this is that the prison population is, by nature, transitory. See Document 188 at 8. The court held that Mr. Sexton could be a named plaintiff in the case because he suffered the injury at the time he filed his complaint, and class certification related back to the time the initial complaint. *Id.* at 9. Furthermore, the Court also found that Mr. Sexton, a class representative, exhausted his administrative remedies. And, named Plaintiff David McGee, who

12. The built-in security lighting is mounted to the ceiling of the cells at issue and cannot be turned on or off by the inmate, nor is any type of shade allowed or provided. Inmates sleep in bunk beds within the cells. The top bunk is less than three feet from the ceiling where the fluorescent security light fixture is positioned. The security lighting provides enough light to read by in either the top or bottom bunk in the cell at all times in the cell. The security lighting is so bright that the main cell lights are unnecessary, and inmates frequently choose not to use the main cell lights.
13. According to the Defendant, the justification for such constant lighting is security, specifically that constant illumination is “an essential aid in suicide prevention,” yet this essential aid is apparently not necessary at Southeast State Correctional Facility, the Caledonia Work Camp, Dale Correctional Facility, or A Unit of Northeast State Regional Correctional Facility, A Unit of Marble Valley Regional Correctional Facility, A, B, C, D or E Units of Northwest Regional Correctional Facility, A, B, or C Units of Chittenden Regional Correctional Facility. According to Defendant, in these facilities or units, use flashlights for security checks.

#### **The Effects of Constant Illumination**

14. In the scientific literature the light and dark cycle is recognized as a powerful synchronizer of the circadian rhythms that keep the body in sync. Light interferes with sleep, at least in part, because it inhibits melatonin production and makes it more difficult to fall asleep at the beginning of the sleep cycle, and it continues to inhibit melatonin production and advances the end of the circadian cycle, causing those exposed to light to wake earlier.

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also exhausted his administrative remedies, is now back at Northern State Correctional Facility, currently suffering constant illumination.

15. Sleep deprivation has been shown to result in cognitive problems, memory deficits, and confusion and anxiety. In addition, it can intensify psychiatric symptoms, inhibit the immune response, and cause weight gain.
16. In recent studies of shift-workers, a link was demonstrated between light-induced suppression of melatonin and an increased risk of breast and colorectal cancers.
17. Hrayr Attarian, M.D., Assistant Professor of Neurology and Medicine at the University of Vermont, and Director of the Vermont Regional Sleep Center, has agreed to provide expert testimony for Plaintiffs in this matter and will provide an opinion as to the short-term and long-term harms associated with exposure to constant illumination.
18. Named Plaintiff Jacob Sexton complains that constant illumination exacerbated the documented, acute migraine headaches he suffers from, yet his consistent complaints to medical staff and exhaustion of the grievance process led only to Mr. Sexton being given a wool blanket to put over his head, which was not a practical option in the un-air-conditioned facility in the summer months.
19. Named Plaintiff David McGee, now currently incarcerated at Northern State Correctional Facility, complains of problems with falling asleep and with staying asleep. Mr. McGee complains of jet-lag like symptoms, an increased frequency of headaches, an increase in cold/flu-like symptoms, and mental fatigue and confusion. Mr. McGee complains that exposure to constant illumination exacerbates his existing depression, anxiety, and bipolar disorders, and he complains of the future risk of cancer and other long-term risks he has been exposed to through constant illumination and concomitant sleep deprivation.

**CLAIMS FOR RELIEF**

**First Claim – Eighth Amendment**

20. By consciously subjecting Plaintiffs to the inhumane condition of constant illumination, Defendants have acted, and continue to act, with deliberate indifference to Plaintiffs' serious health concerns stemming from exposure to constant illumination and the resulting sleep deprivation it causes. Defendants have violated Plaintiffs' right to be free from cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution.

**Second Claim – Chapter 1, Article 18 of the Vermont Constitution**

21. By consciously subjecting Plaintiffs to the inhumane condition of constant illumination, Defendants have acted, and continue to act, with deliberate indifference to Plaintiffs' serious health concerns arising from exposure to constant illumination and the resulting sleep deprivation it causes. Defendants have violated Plaintiffs' right to be free from cruel and unusual punishment, which is, in effect, guaranteed by Chapter 1, Article 18 of the Vermont Constitution. *See State v. Burlington Drug Co.*, 84 Vt. 243, 78 A. 882, 885-886 (1911).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court:

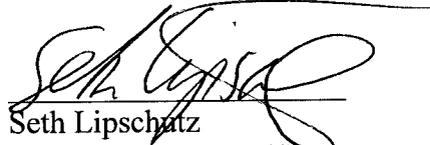
1. Issue a judgment declaring the actions of Defendants described herein are unlawful and violate Plaintiff's rights under the Constitution and laws of the United States and the State of Vermont;

2. Preliminarily and permanently enjoin Defendants, and their subordinates, agents, employees, and all others acting in concert with them, from subjecting Plaintiffs to the conditions set forth in this Complaint; and
3. Grant such other relief as the Court considers just and proper.

DATED at Montpelier, Vermont this April 15, 2007.

Respectfully Submitted,

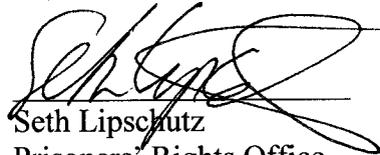
By:

  
Seth Lipschutz  
Prisoners' Rights Office  
6 Baldwin Street, 4<sup>th</sup> Floor  
Montpelier, Vermont 05633-3301

cc: David McGee  
Jacob Sexton  
Richard Pahl  
Jose Torres  
Kevin Kimber  
James Anderson  
Mathew Viens, Esq.

**CERTIFICATE OF SERVICE**

The undersigned counsel certifies that a copy of this Second Amended Complaint For Declaratory and Injunctive Relief was served on counsel for Defendant Robert Hofmann, at the Vermont Attorney General's Office, Ladd Hall, 103 South Main Street, Waterbury, Vermont.



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