IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

J.A., by and through her next friend, Kimberly Hornsby; L.R. by and through her next friend Robert Rosenthal, R.B., by and through her next friend, Helen Johnson, T.D. by and through her next friend, Meshunda Ducre; L.H. by and through her next friend Dorothy Henderson; on behalf of themselves and all other persons similarly situated; H.D. by and through her next friend, Roy Dowdy; S.G., by and through her next friend, Billie Stewart; M.S. by and through her next friend, Audrea Sibley; E.S. by and through her next friend, Alicia Stojic; S.W. by and through her next friend, Virginia Cook; and the Mississippi Protection and Advocacy Systems, Inc.	Case No. 3:07-cv-00394 DPJ-JCS
Plaintiffs,	SECOND AMENDED COMPLAINT
vs.	
GOVERNOR HALEY BARBOUR, in his official capacity; DONALD TAYLOR, in his official capacity as Executive Director of the Mississippi Department of Human Services; L. DONALD ARMAGOST in his official and individual capacities as the administrator of Columbia Training School; RICHARD JAMES, in his official and individual capacities as Assistant Administrator of Columbia Training School; KATHY PITTMAN, in her official capacity as Director of the Division of Youth Services; Mr. ALEXANDER in his official and individual capacities as a Columbia Training School Security Officer.	
Defendants.	

SECOND AMENDED COMPLAINT

1. This is a civil action pursuant to 42 U.S.C. § 1983 to vindicate the rights of girls committed to Columbia Training School under the Eighth and Fourteenth Amendments to the United States Constitution. The Plaintiffs are all girls living with mental illness who were committed to Columbia Training School for non-violent offenses; most of the girls are victims of past physical or sexual abuse. All were sent to Columbia to receive rehabilitative treatment so that they could turn their troubled lives around. Indeed, the Constitution demands that youth committed to Columbia Training School receive individualized care and treatment to enable them to become productive members of society. Regardless of whether they live with a mental illness, youth committed to Columbia also have a "right to treatment," which includes the right to reasonably safe conditions of confinement, rehabilitative training, and freedom from unreasonable bodily restraint. Both disabled and non-disabled children committed to training schools are further protected by the Constitution's prohibition on cruel and unusual punishment.

2. Despite a well-documented history of widespread abuse at Columbia Training School, Defendants fail to implement the staff oversight policies and practices that would protect the girls from violations of their constitutional rights. Defendants continue to deny rehabilitative and mental health treatment to disabled girls at Columbia and have failed to take appropriate measures to protect the girls from illegal abuses.

3. Instead of providing the individual Plaintiffs with constitutionally required care and rehabilitation, the Defendants ignore well-established law and act with deliberate indifference by subjecting the girls to horrendous abuses such as prolonged,

punitive shackling and, in at least one case, a sexual assault. Compounding these abuses, the Defendants also deny Columbia students the mental health and rehabilitative care that they desperately needed and to which they are entitled under federal law.

4. While under the care of the Defendants, several individual Plaintiffs engaged in acts of serious self-harm because of Defendants' failure to provide them with constitutionally adequate mental health treatment and supervision. One suicidal girl was left alone long enough to slice her wrist on the edges of her concrete bunk. Another cut herself with glass and with a razor blade she found just outside her cell. A third girl carved the words "HATE ME" into her forearm while she was purportedly on a high level of suicide watch.

5. The individual Plaintiffs are joined by Mississippi Protection and Advocacy, Inc. ("P&A"), a non-profit organization authorized by Congress to enforce the civil rights of people living with disabilities. P&A seeks declaratory and injunctive relief on behalf of those Mississippi citizens with disabilities who are adversely affected by the illegal policies and practices at Columbia Training School—namely all disabled girls who are committed to the Division of Youth Services.

6. Plaintiffs J.A., L.R., R.B., T.D., and L.H. seek to represent a class composed of all children who are currently or will in the future be confined at Columbia Training School. This proposed class seeks only declaratory and permanent injunctive relief.

7. Plaintiffs J.A., H.D., S.G., M.S., E.S., and S.W., seek declaratory relief, compensatory and punitive damages.

JURISDICTION AND VENUE

8. This action arises under the Eighth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. Jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331, 1343(3), 2201, and 2202.

9. Because the Defendants reside in Columbia, Mississippi, and Jackson, Mississippi, and because the events giving rise to this action occurred in Columbia, Mississippi, venue is proper in the United States District Court for the Southern District of Mississippi pursuant to 28 U.S.C. § 1391(b).

PARTIES

PLAINTIFFS

10. Plaintiff J.A. is a 13-year-old girl who was committed to Columbia on May 17, 2007. At the time the first amended complaint was filed, J.A. was at Columbia, but was paroled as of July 18, 2007. She brings this action by and through her next friend and mother, Kimberly Hornsby. J.A. takes psychotropic medications for her various mental illnesses, including a mood disorder. She has a history of self-harming behavior and substance abuse.

11. Plaintiff L.R. is a 15-year-old girl who was committed to Columbia on May 30, 2007. At the time the first amended complaint was filed, L.R. was at Columbia, but was paroled as of July 18, 2007. She brings this action by and through her next friend and father, Robert Rosenthal. L.R. is not currently taking any medications but has been diagnosed with attention deficient disorder and post-traumatic stress disorder. She has a past history of sexual abuse and substance abuse.

12. Plaintiff R.B. is a 17-year-old girl who was committed to Columbia on May 1, 2007. At the time the first amended complaint was filed, R.B. was at Columbia,

but was paroled as of August 31, 2007. She brings this action by and through her next friend Helen Johnson. R.B. has lost 80% of her hearing in one ear and has been diagnosed with bi-polar disorder, post-traumatic stress disorder, generalized anxiety disorder, panic disorder and cerebral palsy. She has a past history of multiple suicide attempts and physical and sexual abuse.

13. Plaintiff H.D. is a 15-year-old girl who was committed to Columbia Training School from April 27, 2007, until June 29, 2007. She is currently in her home community, awaiting placement for appropriate treatment. She brings this action by and through her next friend and father, Roy Dowdy. H.D. takes psychotropic medications for a mood disorder and has a history of multiple suicide attempts and substance abuse.

14. Plaintiff E.S. is a 17-year-old girl who was committed to Columbia Training School from April 2, 2007, until July 9, 2007. She is currently in her home community, awaiting placement for appropriate treatment. She brings this action by and through her next friend and mother, Alicia Stojic. E.S. takes psychotropic medications for borderline personality disorder. She has a history of sexual abuse, substance abuse, and multiple suicide attempts.

15. Plaintiff S.W. is a 16-year-old girl who was committed to Columbia Training School from January 16, 2007, to June 11, 2007. She is committed to the Specialized Treatment Facility in Gulfport, MS, a residential mental health facility operated by the Mississippi Department of Mental Health. She brings this action by and through her next friend and guardian, Virginia Cook. S.W. has a history of suicidal behavior and self-harm. She takes psychotropic medications for her multiple mental illnesses.

16. Plaintiff S.G. is a 15-year-old girl who was committed to Columbia Training School from May 10, 2007, until June 20, 2007. She brings this action by and through her next friend and mother, Billie Stewart. S.G. takes psychotropic medications for her mental illnesses, including post-traumatic stress disorder and depression. S.G. has a history of sexual abuse and a suicide attempt.

17. Plaintiff M.S. is a 15-year-old girl who was committed to Columbia Training School from February 12, 2007, until June 15, 2007. She is currently in her home community, awaiting placement for appropriate treatment. She brings this action by and through her next friend and mother, Audrea Sibley. M.S. takes three different psychotropic medications for her various mental illnesses, including bi-polar disorder and post-traumatic stress disorder. She has a history of sexual abuse and has been repeatedly committed to mental health treatment facilities.

18. Plaintiff T.D. is a 17-year-old girl currently housed at Columbia Training School. She brings this action by and through her next friend and mother Meshunda Ducre. T.D. takes two psychotropic medications for her mental illnesses, including post-traumatic stress disorder and impulsive behavior. T.D. entered Columbia Training School on September 5, 2007. She has a history of suicide attempts and has been repeatedly committed to mental health treatment facilities.

19. Plaintiff L.H. is a 17-year-old girl who entered Columbia Training School on September 5, 2007, and is currently housed there. She brings this action by and through her next friend and mother Dorothy Henderson. L.H. currently takes psychotropic medications for her mental illnesses, including anxiety and depression. She

has a history of delusions and suicidal behavior and has been hospitalized for substance abuse.

20. Plaintiff P&A is a Mississippi nonprofit organization authorized by Congressional mandate to protect and advocate for the civil rights of persons with disabilities pursuant to the Protection and Advocacy for Individuals with Mental Illness Act (PAIMI), 42 U.S.C. § 10801 et. seq., the Developmental Disabilities Assistance and Bill of Rights Act, (PADD Act) 42 U.S.C. §15041 et seq., and the Protection & Advocacy for Individual Rights Act (PAIR Act), 29 U.S.C. §794e et seq. PAIMI, PADD and PAIR authorize P&A to monitor facilities and programs that house individuals with mental illnesses and developmental disabilities, to investigate suspected incidents of abuse and neglect and to pursue administrative, legal, and other remedies on behalf of individuals with mental illnesses or developmental disabilities wherever programs for such individuals are operated within the State of Mississippi.

21. Pursuant to its duties and this authority, P&A has monitored the conditions at Columbia Training School, has met with and provided legal assistance to the disabled girls confined there, and has investigated complaints of abuse and neglect.

22. Protection of the rights of youth with mental illnesses and developmental disabilities is central to P&A's purpose. Federal statutes charge Plaintiff P&A with the responsibility to represent the interests of persons with mental illnesses and developmental disabilities in state institutions, including training schools, who also have standing to sue in their own right. See 45 C.F.R. § 1386.25.

DEFENDANTS

23. Defendant Haley Barbour is the Governor of Mississippi and is responsible for ensuring that all Mississippi agencies comply with applicable federal law. Defendant Barbour oversees and directs the activities of the Mississippi Department of Human Services pursuant to Miss. Code Ann §43-1-2. Defendant Barbour is sued in his official capacity only.

24. Defendant L. Donald Armagost is the Administrator of Columbia Training School. In that capacity, Defendant Armagost exercises administrative control of and has responsibility for Columbia Training School. He is responsible for the day-to-day operations of the facility and supervises all conditions and practices therein. Defendant Armagost directly supervises Columbia staff and is responsible for the implementation of policy and procedure at Columbia Training School. Defendant Armagost is sued in his individual and official capacities.

25. Defendant Richard James is an Assistant Administrator of Columbia Training School. In that capacity, Defendant James assists Defendant Armagost in exercising administrative control of Columbia Training School and in supervising all conditions and practices therein. He is second in command at the facility, and shares responsibility for the day-to-day operations of the facility and supervises all conditions and practices therein. Defendant James assists Defendant Armagost in directly supervising Columbia staff. Defendant James is responsible for the implementation of policy and procedure at Columbia Training School. Defendant James is sued in his individual and official capacities.

26. Defendant Mr. Alexander is an employee of Columbia Training School. In that capacity, he is directly responsible for the day-to-day care of the girls

committed to the facility. His primary responsibility is ensuring the safety and care of the girls committed to Columbia Training School. Defendant Alexander is sued in his individual and official capacities. Defendant Alexander's first name is unknown to Plaintiffs at this time.

27. Defendant Kathy Pittman is the Director of the Division of Youth Services. In that capacity, Defendant Pittman exercises administrative control of and has responsibility for the operation of Columbia and Oakley Training Schools. Pursuant to Miss. Code Ann. §§ 43-1-2; 43-1-5; 43-27-2; 43-27-8; 43-27-1; 43-27-11, Defendant Pittman is directly responsible for training and monitoring all staff employed at Columbia Training School and developing and overseeing policy development and implementation at the facility. As the Director of Youth Services she has "exclusive supervisory care, custody and active control of all children properly committed or confined in its facilities and included in its programs." Miss. Code Ann. § 43-27-12. She is responsible for ensuring that Columbia Training School operates in a manner consistent with state and federal law. Defendant Pittman is sued in her official capacity only.

28. Defendant Donald Taylor is the Executive Director of the Mississippi Department of Human Services. Youth Services is a Division of the Department of Human Services. Pursuant to Miss. Code Ann. §§ 43-1-2; 43-1-4; 43-27-2; 43-27-8; 43-27-10; 43-27-11. Defendant Taylor is directly responsible for training and monitoring all staff employed at the Division of Youth Services and developing and overseeing policy development and implementation in the Division. Defendant Taylor is responsible for ensuring that Mississippi Training Schools operate in a manner that is consistent with state and federal law. As Executive Director, Defendant Taylor has "executive and

administrative supervision over all state-owned facilities used for the detention, care, treatment and after-care supervision of children." Miss. Code Ann. § 43-27-10. He is responsible for ensuring that Columbia Training School operates in a manner consistent with state and federal law. Defendant Taylor is sued in his official capacity only.

CLASS ACTIONS ALLEGATIONS

29. Plaintiffs J.A., L.R., R.B., T.D., and L.H. bring this suit on their own behalf and on behalf of all children who are or who will in the future be incarcerated at Columbia Training School.

30. The class is so numerous that joinder of all members is impractical. Recently, Columbia Training School's population has fluctuated from between thirty to sixty girls, but the facility has the capacity to house over one hundred children on any given day. Children are committed to Columbia for varying lengths of time, and the population changes on a weekly basis. The class also includes hundreds of future members whose names are not known. Fed. R. Civ. P. 23(a)(1).

31. There are questions of law and fact common to all class members, including but not limited to the Defendants' failure to protect class members from harm and the Defendants' failure to provide class members with adequate mental health and rehabilitative services. Fed. R. Civ. P. 23(a)(2).

32. Because the policies, practices and customs challenged in this Complaint apply with equal force to the named Plaintiffs and the other members of the class, the claims of the named Plaintiffs are typical of the class in general. Fed. R. Civ. P. 23(a)(3).

33. The named Plaintiffs will fairly and adequately represent the interests of the class. They possess a strong personal interest in the subject matter of the lawsuit, and are represented by experienced counsel with expertise in class action litigation in federal court. Counsel have the legal knowledge and the resources to fairly and adequately represent the interests of all class members in this action. Fed. R. Civ. P. 23(a)(4).

34. Defendants have acted and refuse to act on grounds generally applicable to the class in that Defendants' policy and practice of violating the Plaintiffs' constitutional rights has affected all class members equally. Accordingly, final injunctive and declaratory relief is appropriate to the class as a whole. Fed. R. Civ. P. 23(b)(2).

STATEMENT OF FACTS

35. Columbia Training School, which houses all delinquent girls committed to the Department of Human Services, Division of Youth Services, is one of two facilities in Mississippi where children who have been adjudicated delinquent are committed for the purpose of rehabilitation and treatment. Most of the youth at Columbia suffer from mental disorders or disabilities. A study commissioned by the Mississippi Department of Public Safety and the Mississippi Department of Mental Health found that 66% to 85% of incarcerated juveniles in Mississippi suffer from at least one diagnosable mental disorder, compared to only 14% to 20% of youth in the general population. Angela Robertson & Jonelle Husain, Mississippi State University, Prevalence of Mental Illness & Substance Abuse Disorders Among Incarcerated Juveniles (July 2001). According to a legislative audit, the vast majority of girls

committed to Columbia are there for non-violent offenses such as drug charges and shoplifting. Joint Committee on Performance, Evaluation and Expenditure Review, Memorandum to Representative George Flaggs, Jr. (Sept. 22, 2006).

36. Columbia Training School has a long and troubled history of failing to care for the youth in its custody. In May 2002, the Joint Legislative Committee on Performance Evaluation and Expenditure Review ("PEER") submitted a report to the Mississippi Legislature entitled Health and Safety Issues at the Oakley and Columbia Training Schools. The PEER Report found numerous deficiencies at both training schools in the areas of medical care, dental care, prevention of abuse, and treatment and programming for children with special needs. Among many other recommendations, the Report suggested that Columbia change its suicide policy to require that staff respond to suicidal children by "counseling [them] rather than using punitive or disciplinary measures." Defendants knew of PEER's findings, but failed to adequately address these documented concerns.

37. In December 2003, the United States Department of Justice ("DOJ") sued the State of Mississippi over conditions in both training schools. After conducting a sweeping investigation, DOJ found shocking and abusive conditions at Columbia, including rampant and unchecked staff-on-youth abuse. Children with disabilities were routinely denied the mental health, educational and rehabilitative services to which they were legally entitled.

38. In May 2005, the United States and the State of Mississippi settled the lawsuit, entering into a Consent Decree and a Memorandum of Understanding. The parties engaged Ms. Joyce Burrell as an independent monitor and gave her full access to

inspect the training schools. Ms. Burrell files quarterly reports with the Court that document the state's level of compliance with the Memorandum of Agreement and Consent Decree. Since May 2005, Ms. Burrell has filed six reports. Each report documented that Mississippi continually fails to comply with the majority of the settlement provisions. See, e.g., Sixth Quarter Monitor's Report, United States v. Mississippi, 3:03-cv-01354-HTW-JCS (filed June 8, 2007). Defendants knew of these violations and they failed to take adequate action to address the critical violations of the settlement agreement.

39. This ongoing history of widespread abuse and the Plaintiffs' allegations, explained more fully below, illustrates the Defendants' continuing custom and practice of acting with deliberate indifference to the constitutional rights of the disabled girls at Columbia Training School.

Protection from Harm Violations:
Shackling Mentally Ill Girls for 12 Hours a Day

40. In an apparent response to unsubstantiated allegations that Plaintiffs J.A., H.D., S.G., E.S. and S.W. planned to escape from Columbia Training School, Defendants Armagost and James ordered that Columbia staff shackle the girls as a form of punishment for approximately twelve hours a day for time periods ranging from approximately eight days to one month. The girls were required to eat, attend school and use the bathroom while shackled. Defendants Armagost and James also forced the girls to walk to and from their sleeping quarters and the school, the cafeteria, the medical clinic and the chapel while wearing shackles. They were similarly required to participate in recreational activities and to conduct visitation with their families while shackled.

There was absolutely no security or other penological or rehabilitative justification for the shackling of the girls.

41. Defendants Armagost and James ordered Plaintiff J.A. shackled for approximately twelve hours a day from May 24 until May 31, 2007.

42. Defendants Armagost and James ordered Plaintiff H.D. shackled for approximately twelve hours a day from May 4 until May 31, 2007.

43. Defendants Armagost and James ordered Plaintiff E.S. shackled for approximately twelve hours a day from May 17 through May 31, 2007.

44. Defendants Armagost and James ordered Plaintiff S.G. shackled for approximately twelve hours a day from May 24 until May 31, 2007.

45. Defendants Armagost and James ordered Plaintiff S.W. shackled for approximately twelve hours a day from May 17 until May 31, 2007.

46. Pursuant to the orders of Defendants Armagost and James, Columbia staff shackled the girls immediately after they took their showers in the morning, before they went to see the nurse to receive their psychotropic medications. Most frequently, security officers shackled the girls, but occasionally Columbia staff ordered the girls to shackle themselves. Security officers would remove the girls' shackles shortly before they were to take their showers each evening.

47. At times, Columbia staff failed to "double-lock" the shackles so that they would tighten around the girls' ankles with every step they took. This caused the girls excruciating pain, and they frequently complained to Columbia staff about the injuries they sustained as a result of the shackling. Defendants and Columbia staff did nothing to address the girls' complaints of pain.

48. The girls were forced to walk around the campus in their shackles in full view of medical staff, teachers, administration, security officers and all other Columbia employees. Even though Columbia employees are mandatory reporters of child abuse pursuant to MS Code § 43-21-353, upon information and belief, not one Columbia staff member contacted the child-abuse hotline to report the Defendants' prolonged, punitive shackling of these mentally ill girls.

49. In a May 4, 2007 memorandum to Columbia staff member Vonsha Wash-Weary, Defendant Armagost referred to Plaintiff H.D. and wrote, "Do you think we need to put her on 'run risk' status? That would mean leg shackles and limited movement. Let me know what you think." That same day, Columbia staff member Anola Barber wrote: "please put this student [H.D] in leg shackles and on limited movement per attached memo."

50. Defendants Armagost and James made no effort to substantiate allegations that the girls planned to run away. They never questioned the girls or their guardians about the alleged plans. The Defendants failed to inform the girls' guardians of their alleged suspicion that the girls might attempt to leave the campus without permission.

51. Defendants Armagost and James failed to attempt a less restrictive means of preventing the girls from leaving the Columbia campus, such as increased supervision or confinement to a specific area of campus.

52. By shackling the girls for such a prolonged time period and for punitive purposes, Defendants Armagost and James blatantly violated their own policy on the use of restraints. The Division of Youth Services' policy on the use of restraints states:

"Mechanical devices [are] used to prevent an uncontrollable youth from injuring him or herself or others. Mechanical restraints may be only used for short periods of times and must be used under medical supervision. Mechanical restraints shall be defined as plastic or metallic handcuffs or wristlets, chains or anklets, or any other approved or authorized device used to limit the movement of the juvenile's body...Use of mechanical restraints is restricted to necessary applications: a) to gain control of out of control juveniles; b) as a precaution against escape during transport; c) for medical reasons under the direction of medical staff." Mississippi Department of Human Services, Division of Youth Services, Juvenile Institutions, Use of Force Policy. The Division of Youth Services Policy on Abusive Institutional Practices also states "[p]ractices and or behaviors which humiliate demean and/or abuse youth will never be used to control behavior." The list of abusive practices specifically refers to "[i]mproper use of restraints: restraining youth as punishment, using techniques such as hog-tying or pole shackling is abuse. The prolonged application of restraints is also abuse." Mississippi Department of Human Services, Division of Youth Services, Juvenile Institutions, Abusive Institutional Practices.

53. Defendants knew that Plaintiffs were mentally ill and that they had histories of abuse.

54. At no time during their recent commitments to Columbia Training School did Plaintiffs act in an uncontrollable manner or in any other manner that could justify the prolonged use of ankle shackles under the Defendants' own policies or under the U.S. Constitution. By shackling mentally ill girls—many of whom have extensive histories of physical and sexual abuse—Defendants Armagost and James acted with

deliberate indifference, significantly departed from reasonable professional judgment and violated clearly established law.

55. Despite their knowledge of Columbia Training School's long history of widespread abuse and neglect of girls in its custody, Defendants Barbour, Taylor and Pittman implement, enforce, encourage and/or sanction a practice and/or custom of deliberate indifference to the constitutional rights of disabled girls which manifest in egregious abuses like the excessive use of restraints described above.

56. The excessive use of restraints ordered by Defendants Armagost and James caused Plaintiffs J.A., H.D., S.G. and E.S. and S.W. to suffer physical injuries including bruises, abrasions, pain and extreme discomfort. Defendants Armagost and James' actions exacerbated Plaintiffs' mental illnesses and caused them humiliation and extreme mental anguish.

Protection from Harm:
Excessive use of Force

57. On or about June 13, 2007, a Columbia staff member known as "T.S. 10" choked Plaintiff L.R. to the point where she lost consciousness and fell to the ground. This happened while T.S. 10 attempted to break up a fight between L.R. and another Columbia student.

58. Columbia staff watched the girls fight for several minutes without attempting to stop the girls from hitting each other. Eventually, staff radioed T.S. 10, who arrived on the scene and immediately broke up the fight by placing his hands around L.R.'s neck and squeezing until she became unconscious and dropped to the ground.

59. Neither T.S. 10 nor any other Columbia staff member attempted to use a less drastic form of restraint before choking L.R.

60. When L.R. regained consciousness, T.S. 10 handcuffed her and took her to the Observational Management Unit (OMU) for the night. She complained of severe neck pain and was seen by a nurse for her injury. The nurse failed to take pictures of L.R., despite the fact that her neck was visibly swollen.

61. The Division of Youth Services Policy on Abusive Institutional Practices states that "The use of force shall be a last resort. Every effort shall be made to educate youth about the rules and expectations of the facility. Supervision of activities and youth shall be provided to discourage and prevent unacceptable behavior. Intervention should be directed at resolution without force. . ."

62. Upon information and belief, Columbia staff members failed to report this incident of child abuse as required by MS Code § 43-21-353.

63. Despite knowledge of Columbia Training School's long history of widespread abuse and neglect of girls in its custody, Defendants Barbour, Taylor and Pittman implement, enforce, encourage and/or sanction a practice and/or custom of deliberate indifference to the constitutional rights of girls which manifest in egregious abuses like the excessive use of force described above. By their failure to follow their own policies and state and federal law, and through their inability to effectively monitor and train staff, Defendants continue to subject Columbia students to an unacceptable risk of excessive use of force and further violations of federal constitutional rights.

Protection from Harm:
Staff-on-Youth Sexual Assault

64. Several months into her commitment at Columbia Training School, Plaintiff M.S. was placed in the OMU, which Columbia uses for disciplinary segregation.

65. During Plaintiff M.S.'s first night in the OMU, Defendant Alexander sexually assaulted her. Defendant Alexander stood outside of M.S.'s cell door watching her while she dressed after she had taken her evening shower. He then motioned to her to lift up her shirt to show him her breasts. M.S. refused.

66. Defendant Alexander then entered M.S.'s cell with a tissue in his hand. He proceeded to grab M.S. in an embrace, kiss her, and rub her breasts and genitals with his hands over her clothes. After a few minutes, Defendant Alexander then abruptly left M.S.'s cell.

67. Defendant Alexander returned later that same night to deliver M.S's nightly snack. He again entered her cell, grabbed her around her waist and attempted to put his hand in her underwear. M.S. struggled against Defendant Alexander, and he then left her cell.

68. Other students in the OMU observed Defendant Alexander gesture to M.S. and touch her inappropriately.

69. The Division of Youth Services Policy on Abusive Institutional Practices states that "sexual comments, advances or gestures, including making embarrassing comments about a youth's body or sex, making gestures that have a sexual connotation and/or touching or pointing to a youth's body in ways that are sexually suggestive or provocative" should be considered abusive institutional practices. The policy further states that "a youth housed in a training school will not be subject to abusive institutional practices."

70. Defendant Alexander's attack on M.S. violated clearly established state and federal law. Mississippi Code § 97-3-104 criminalizes sexual activity between any

"jailer or guard" and an offender "incarcerated at any jail or any state, county or private correctional facility." This offense is punishable by a fine of up to $5000 and a prison term of up to 5 years.

71. Upon information and belief, Defendants Armagost, James, Pittman, and Taylor had reason to believe that Defendant Alexander had a pattern and practice of sexually assaulting girls at Columbia. Defendants Armagost, James, Pittman, and Taylor failed to take any action to prevent these assaults.

72. M.S. reported Defendant Alexander's assault to various Columbia staff members including Ms. Quinn and Vonsha Wash-Weary. M.S. was never informed of the results of any investigation into this incident, and she never received any mental health services to help her deal with the trauma of this abuse. Defendants were deliberately indifferent to M.S.'s complaints that Defendant Alexander sexually abused her and to the consequences of that abuse.

73. In addition to M.S.'s other disabilities, M.S. was sexually abused by her biological father and suffers from post-traumatic stress disorder as a result of this abuse. Defendant Alexander's victimization of M.S. caused a marked increase in her levels of anxiety, depression, humiliation and anguish.

74. Despite knowledge of Columbia Training School's long history of widespread abuse and neglect of girls in its custody, Defendants Barbour, Taylor and Pittman implement, enforce, encourage and/or sanction a practice and/or custom of deliberate indifference to the constitutional rights of girls which manifest in egregious abuses like the sexual assault described above.

75. Disabled children are more than twice as likely as their non-disabled peers to be sexually abused. L.A. Davis, More Common than We Think: Recognizing and Responding to Signs of Violence, University of Minnesota, Institute on Community Integration (2000). By their failure to follow their own policies and state and federal law, and through their inability to effectively monitor and train staff, Defendants continue to subject disabled Columbia students to an unacceptable risk of sexual assault and further violations of federal constitutional rights.

Inadequate Mental Health/Rehabilitative Treatment and Self-Harm Prevention Practices and Policies

76. Defendants James and Armagost allowed Plaintiffs H.D., E.S., S.W., T.D., and L.H. to harm themselves despite their knowledge that these girls struggled with mental illness and self-harm behaviors. They also failed and continue to fail to provide Plaintiffs and other girls residing at Columbia with the appropriate treatment for their mental illnesses while committed to the training school.

77. Defendants Armagost and James placed Plaintiff H.D. on the second highest level of suicide watch because they had knowledge of her history of self-harming behavior and found an alleged suicide note written by H.D. While on suicide watch, H.D. was forced to strip naked and placed in a "suicide smock," an indestructible garment that youth at risk of suicide are required to wear. She was then placed alone in a cell for over 14 hours. Instead of providing her with desperately needed psychological help, Defendants Armagost and James made no effort to stabilize her mental state, and H.D. was not allowed to speak to a mental health professional. While she was on suicide watch, Columbia staff members failed to perform periodic checks on H.D.'s cell to

ensure that she was not engaging in acts of self-harm. As a result, H.D. carved the words "HATE ME" into her forearm, causing a deep abrasion that spans the length of her forearm.

78. While Plaintiff E.S. was on suicide watch, Columbia staff members failed to perform periodic checks on her cell to ensure that she was not engaging in acts of self-harm. As a result, E.S. sliced her wrists with glass she found outside of her living quarters, and on a separate occasion cut her wrists on the edge of her concrete bunk. During this time, E.S. was not provided with any psychological help, she was not allowed to speak to a mental health professional, and Columbia staff made no effort to stabilize her moods.

79. When S.W. was on suicide watch, Columbia staff members failed to perform periodic checks on her cell to ensure that she was not engaging in acts of self-harm. As a result, she was able to slice her wrists on the edge of her concrete bunk in the OMU. She was not provided with any psychological help, she was not allowed to speak to a mental health professional, and Columbia staff made no effort to stabilize her moods.

80. On or about November 8, 2007, Columbia staff placed Plaintiff T.D. was on suicide watch, stripped her naked, placed her in a smock and forced to stay in her cell with a toilet that she could not flush. She was locked in her cell for over 24 hours and had to eat and sleep near her toilet that was filled with her own feces and urine. She did not see her counselor, receive educational services, or have the opportunity for large muscle exercise for over 24 hours. She was not provided with any psychological help, she was not allowed to speak to a mental health professional, and Columbia staff made no effort to stabilize her moods.

81. This incident was just the most recent manifestation of the Defendants' failure to care for T.D.'s serious mental illnesses. Defendants were acutely aware that they were failing to meet T.D.'s needs. On October 10, 2007 a Columbia counselor wrote in T.D.'s file that "[T. D.] is trying extremely hard but her breaking point is coming. Arrangements will have to be made if she is to continue being successful." Then on October 30, 2007, another counselor noted that T.D. should be referred "to medical staff for further evaluation to be considered for a more appropriate facility." The Defendants continue to deprive T.D. of adequate mental health and rehabilitative services.

82. Plaintiff L.H., who has been diagnosed with depression and prescribed psychotropic medications for her mental illnesses, has been denied adequate health treatment and as a result her depression has gone untreated and her rehabilitation has been impeded. Though L.H scored high on a suicide risk assessment screening administered by Columbia staff, the Defendants failed take the results of the screening seriously. Indeed, Defendants' treatment and supervision of L.H. was so lax and inadequate that on or about October 19, 2007, she attempted suicide by tying a belt around her neck. Before her suicide attempt, Plaintiff L.H. told her counselor, a nurse, the psychologist, and several other key staff members that she planned to kill herself. Columbia staff failed to place L.H. on suicide watch – instead her treatment team recommended that she be "closely monitored." Columbia staff failed to monitor L.H. When the cell doors were opened on the unit to allow the girls to take showers, she was able to leave her cell, take her belt off the back of her door, and return to her cell. Once alone inside her cell, L.H. covered herself with her blanket and tied her belt around her

neck. Once staff realized L.H. was still in her cell, a staff member went into her cell and uncovered L.H. but failed to remove the belt around her neck. Staff did not realize that L.H. was attempting suicide until another cadet alerted them.

83. Mississippi Department of Human Services, Division of Youth Services, Juvenile Institutions Policy on Suicide Prevention requires that staff visually monitor suicidal youth every 10 minutes and provide youth regular access to mental health professionals. However, the Defendants are aware that Columbia staff frequently fail to follow this policy, leaving girls at great risk for self-harm.

84. Upon her admission to Columbia Training School, Columbia's mental health staff informed Defendants Pittman, Armagost and James that Plaintiff J.A. was inappropriately placed at Columbia and would receive neither appropriate mental health services nor rehabilitative benefit from this placement. In violation of federal law, and Miss Code Ann. § 43-21-605, these Defendants made no efforts to secure an appropriate placement for her, and instead allowed Plaintiff J.A. to languish for months at Columbia Training School.

85. Upon her admission to Columbia Training School, Columbia's mental health staff informed Defendants Pittman, Armagost and James that Plaintiff R.B. was inappropriately placed at Columbia and would receive neither appropriate mental health services nor rehabilitative benefit from this placement. Clinical staff noted in early May that R.B. would not "fit in" at Columbia, would be at risk of victimization and needed to be moved to a different facility to receive rehabilitative treatment and adequate mental health care. Despite this recommendation by Columbia clinical staff, and in violation of federal law, and Miss Code Ann. § 43-21-605, these Defendants made no efforts to

secure an appropriate placement for R.B. and instead allowed her to languish for months at Columbia Training School.

86. Plaintiffs J.A. and R.B. are just two of the many girls who the Defendants failed to place appropriately after having direct knowledge that Columbia could not either serve their serious mental health needs or provide appropriate rehabilitative services.

87. Defendants fail to provide Plaintiffs J.A., R.B., L.R., T.D. and L.H. with the mental health services to which they are entitled under federal law. Despite having notice that that Columbia Training School lacks the staffing and resources to adequately care for children, Defendants Barbour, Taylor, Pittman, Armagost and James continue to fail to take the appropriate steps to ensure that Columbia girls receive constitutionally adequate mental health services.

88. Defendants fail to provide Plaintiffs J.A., R.B., L.R., T.D., and L.H. with the rehabilitative services to which they are entitled under federal law. Despite having notice that Columbia staff lacks the staffing and expertise to provide these services to students, Defendants Barbour, Taylor, Pittman, Armagost and James continue to fail to ensure that Columbia girls receive the services to which they are entitled under federal law.

89. Defendants' failure to provide appropriate mental health and rehabilitative treatment violates clearly established federal law and substantially departs from accepted professional judgment.

90. On information and belief, the majority of girls at Columbia are mentally ill. All individual Plaintiffs were committed to Columbia with a host of clearly

identified mental health needs, including depression, post-traumatic stress disorder, substance abuse, and bi-polar disorder. Mental health services at Columbia are constitutionally inadequate to meet the needs of this population. Defendants knew and know about Plaintiffs' and other girls' histories of mental illness, but do not provide them with adequate mental health treatment.

91. The abuses inflicted on the Plaintiffs at Columbia were compounded by the inadequate mental health treatment they received. This utter lack of treatment exacerbated their disabilities, caused each girl mental anguish as well as pain and suffering, and significantly retarded their progress towards rehabilitation. Defendants' policy, practice, and custom of providing inadequate mental health care harmed Plaintiffs and continue to harm girls who reside at Columbia.

92. In addition to failing to provide appropriate mental health services, Defendants failed to provide appropriate rehabilitative services to the girls committed to Columbia. None of the Plaintiffs received the rehabilitative services to which they were entitled under federal law—services which would have helped turn their troubled lives around.

93. Defendants' failure to provide appropriate mental health and rehabilitative treatment violates clearly established federal law and substantially departs from accepted professional judgment.

94. Despite knowledge of Columbia Training School's long history of widespread abuse and neglect of girls in its custody, Defendants Barbour, Taylor and Pittman implement, enforce, encourage and/or sanction a practice and/or custom of deliberate indifference to the constitutional rights of girls which manifest in egregious

abuses like the failure to provide constitutionally adequate mental health and rehabilitative services.

EXHAUSTION

95. The individual Plaintiffs have exhausted all available administrative remedies.

96. In a series of letters dated June 4, June 11, and June 27, 2007, P&A brought these matters to the attention of the state and attempted to reach a cooperative, mutually agreeable resolution of these claims. The State has declined to engage in settlement discussions with individual Plaintiffs and with P&A. P&A has exhausted administrative remedies pursuant to 42 U.S.C § 10807.

CAUSES OF ACTION

COUNT 1

DECLARATORY AND INJUNCTIVE RELIEF TO REMEDY EIGHTH AND FOURTEENTH AMENDMENT VIOLATIONS: INADEQUATE MENTAL HEALTH AND REHABILITATIVE TREATMENT

97. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

98. By their forgoing actions and inactions, Defendants Barbour, Taylor, Pittman, Armagost and James failed and continue to fail to provide adequate mental health and rehabilitative treatment to girls committed to Columbia Training School. These Defendants know of the wide-spread failure to provide constitutionally adequate care to Columbia students, yet they continue to willingly and knowingly disregard the girls' constitutional rights. Their deliberate indifference to the serious mental health

needs of the Plaintiffs and their substantial departure from accepted professional standards of treatment violates the Eighth and Fourteenth Amendments to the United States Constitution, as enforced through 42 U.S.C. §1983. The putative class represented by Plaintiffs J.A., L.R., R.B., T.D., L.H., and P&A will suffer irreparable and repeated injury unless this Court orders equitable relief. Damages cannot adequately address the injuries suffered by girls at Columbia Training School. Plaintiffs J.A., L.R., R.B., T.D., L.H., the putative class which they represent, and P&A are entitled to a permanent injunction prohibiting Defendants from engaging in the unlawful conduct described herein.

99. For reasons including, but not limited to, those stated herein, an actual dispute exists between the Defendants and Plaintiffs J.A., L.R., R.B., T.D., L.H., the putative class which they represent, and P & A, which parties have genuine and opposing interest, which interests are direct and substantial, and of which a judicial determination will be final and conclusive. This dispute entitles Plaintiffs J.A., L.R., R.B., T.D., L.H., the putative class which they represent and P&A to a declaratory judgment that the Defendants' conduct is unconstitutional, as well as such other and further relief as may follow from the entry of such a declaratory judgment.

COUNT 2

DECLARATORY AND INJUNCTIVE RELIEF TO REMEDY EIGHTH AND FOURTEENTH AMENDMENT VIOLATIONS: FAILURE TO PROTECT FROM HARM

100. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

101. By their forgoing actions and inactions, Defendants Barbour, Taylor, Pittman Armagost, James and Alexander fail to protect Columbia students from harm. The Defendants know of Columbia Training School's wide-spread failure to protect Columbia students from harm as the Constitution requires, yet they continue to willingly and knowingly disregard the girls' constitutional rights. Their deliberate indifference to the constitutional rights of the Plaintiffs to be protected from excessive force and substantial harm violates the Eighth and Fourteenth Amendments to the United States Constitution, as enforced through 42 U.S.C. §1983. Plaintiffs J.A., L.R., the putative class which they represent, and P&A will suffer irreparable and repeated injury unless this Court orders equitable relief. Damages cannot adequately address the injuries suffered by girls at Columbia Training School. Plaintiffs J.A., L.R., the putative class which they represent, and P&A are entitled to a permanent injunction prohibiting Defendants from engaging in the unlawful conduct described herein.

102. For reasons including, but not limited to, those stated herein, an actual dispute exists between the Defendants and Plaintiffs J.A, L.R., the putative class which they represent, and P & A, which parties have genuine and opposing interest, which interests are direct and substantial, and of which a judicial determination will be final and conclusive. This dispute entitles Plaintiffs J.A., L.R., the putative class which they represent and P&A to a declaratory judgment that the Defendants' conduct is unconstitutional, as well as such other and further relief as may follow from the entry of such a declaratory judgment.

COUNT 3

DAMAGES FOR EIGHTH AND FOURTEENTH AMENDMENT VIOLATIONS:

EXCESSIVE USE OF RESTRAINTS

103. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

104. By taking the actions alleged above, Defendants James and Armagost were deliberately indifferent to the constitutional rights of Plaintiffs J.A., H.D., S.G., E.S. and S.W to be free from excessive force and substantial harm, in violation of the Eighth and Fourteenth Amendments to the United States Constitution, as enforced though 42 U.S.C § 1983. Because these Defendants acted in clear violation of well-settled law, of which a reasonable person would have been aware, they are not entitled to a good faith or official immunity defense. The actions of these Defendants were intentional, malicious, reckless, and showed a callous disregard of or indifference to the rights of these Plaintiffs. Plaintiffs J.A., H.D., S.G., E.S. and S.W seek a declaratory judgment, compensatory and punitive damages against these Defendants.

COUNT 4

DAMAGES FOR EIGHTH AND FOURTEENTH AMENDMENT VIOLATIONS:
FAILURE TO PROVIDE ADEQUATE REHABILTIVE/MENTAL HEALTH TREATMENT AND PROTECTION FROM HARM

105. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

106. By taking the actions alleged above, Defendants Armagost and James intentionally and maliciously violated Plaintiffs H.D., E.S., S.W., T.D., and L.H. rights to receive adequate mental health and rehabilitative treatment and to be protected from harm, in violation of the Eighth and Fourteenth Amendments to the United States Constitution, as enforced though 42 U.S.C § 1983. Because these Defendants acted in

clear violation of well-settled law, of which a reasonable person would have been aware, they are not entitled to a good faith or official immunity defense. Defendants' Armagost and James actions were intentional, malicious, reckless, and showed a callous disregard of or indifference to the rights of Plaintiffs H.D., E.S., S.W., T.D., and L.H.. Plaintiffs H.D., E.S., S.W., T.D., and L.H. seek declaratory judgment, compensatory and punitive damages against Defendants Armagost and James.

COUNT 5

DAMAGES FOR EIGHTH AND FOURTEENTH AMENDMENT VIOLATIONS: STAFF ON YOUTH SEXUAL ASSAULT

107. Plaintiffs incorporate by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

108. By taking the actions alleged above, Defendant Alexander intentionally and maliciously violated Plaintiff M.S.'s right to be free from excessive force and substantial harm, in violation of the Eighth and Fourteenth Amendments to the United States Constitution, as enforced though 42 U.S.C § 1983. Because this Defendant acted in clear violation of well-settled law, of which a reasonable person would have been aware, he is not entitled to a good faith or official immunity defense. Defendant Alexander's actions were intentional, malicious, reckless, and showed a callous disregard of or indifference to the rights of Plaintiff M.S. Plaintiff M.S. seeks declaratory judgment, compensatory and punitive damages against Defendant Alexander.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray that this Honorable Court grant the following relief:

a. Certify a class consisting of all youth who are or will be incarcerated at Columbia Training School;

b. Declare that the acts and omissions of the Defendants violate the Constitution and federal law;

c. Enter a permanent injunction requiring the Defendants, their agents, employees and all persons acting in concert with them cease their unconstitutional and unlawful practices;

d. Grant the individual Plaintiffs compensatory and punitive damages for the pain, suffering, anguish and humiliation they suffered as a result of Defendants' unlawful practices;

e. Award to the Plaintiffs reasonable costs and attorney's fees; and

f. Grant the Plaintiffs such other relief as the Court deems just.

Respectfully submitted,

/s/ Kristen Levins
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CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2008 a true and correct copy of the foregoing document was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail for anyone unable to accept electronic filing. Parties may access this filing through the Court's CM/ECF System.

This 17th day of January, 2008.

/s/ Kristen Levins
Kristen Levins