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IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF MONTANA
 HELENA DIVISION

11 TERRY LANGFORD, JAMES BALL, JAMES)
 12 PETERSCHICK, JEFF DELAPHIANO, TRUEMAN)
 13 CONRAD, ANTHEL BROWN, DAN MASON, and)
 14 RUDY MEISSNER, on behalf of themselves)
 15 and all others presently incarcerated or)
 16 who will in the future be incarcerated) Case No. CV 92-13-H-LBE
 17 at the Montana State Penitentiary,)
 18)

19 Plaintiffs,)
 20)
 21)

22 vs.)
 23)
 24)

25 MARC RACICOT, in his official)
 capacity as Governor of the State of)
 Montana, RICK DAY, in his official)
 capacity as Director, Department of)
 Corrections and Human Services; JAMES)
 "MICKEY" GAMBLE, in his official)
 capacity as the Administrator of the)
 Corrections Division of the Montana)
 Department of Corrections and Human)
 Services, MIKE MAHONEY, in his official)
 capacity as Deputy Warden, Montana State)
 Prison; and the Department of Corrections)
 and Human Services,)

Defendants.)
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FIFTH AMENDED
COMPLAINT

Plaintiffs complain of defendants and allege as follows:

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JURISDICTION

1. Pursuant to Title 28 U.S.C. §§ 2201 and 2202, this Court has jurisdiction to declare the rights of the parties and to grant all further relief found necessary and proper. This action arises under the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution and the provisions of Title 42 U.S.C. § 1983 and Title 42 U.S.C. § 12101 et seq., as hereinafter more fully appears. The jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1343.

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VENUE

2. Venue is proper in the district of Montana under 28 U.S.C. § 1391(a). The defendants reside in the State of Montana, and the plaintiffs' claims for relief arise in Montana.

3. Venue is proper in the Helena Division under Rule 105-3(a) of the Rules of Procedure of the United States District Court of the District of Montana because one or more of the defendants and most of the plaintiffs reside in that Division, and the claims arose there.

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PARTIES

4. Named plaintiffs are prisoners currently incarcerated either at the Montana State Prison (MSP) at Deer Lodge or at the expansion unit for protective custody prisoners at the Warm Springs State Hospital. Terry Langford and Rudy Meissner are currently housed in the Maximum Security Unit. James Ball is currently housed in the protective custody unit located at Warm Springs. James Peterschick is currently participating in the sex

1 offender treatment program at Montana State Prison. Anthel Brown
2 and Dan Mason are both High Side prisoners who have serious health
3 care needs which are not being adequately addressed. Jeff
4 Delaphiano and Trueman Conrad are both Low Side prisoners at MSP
5 whose health care needs are not being adequately addressed. Mr.
6 Delaphiano has a mental disability and Mr. Conrad is physically
7 disabled and in a wheelchair.

8 5. Defendant Marc Racicot is the Governor of Montana. As
9 such, he is the chief executive officer for the State of Montana
10 and is ultimately responsible for the operation of the Montana
11 State Prison. He is sued in his official capacity.

12 6. Defendant Department of Corrections and Human Services
13 (DCHS) is an executive agency and arm of state government of the
14 State of Montana charged by law with the duty to, among other
15 things, develop and maintain comprehensive services and programs
16 in the field of adult corrections; to incarcerate and rehabilitate
17 felons within the State of Montana; and to adopt rules for the
18 admission, custody, transfer and release of prisoners within the
19 State of Montana. The DCHS is an appropriate party-defendant in
20 an action under the Americans with Disabilities Act (ADA), Title
21 42 U.S.C. § 12101, et. seq.

22 7. Defendant Rick Day is the Director of Department of
23 Corrections and Human Services appointed by the governor in
24 accordance with § 2-15-111, MCA. Said defendant is charged by law
25 with the duty to supervise, direct, account for, organize, plan,
administer and execute the functions vested in the Department of

1 Corrections and Human Services (hereinafter "DCHS"); to establish
2 policies to be followed by the Department and its employees and to
3 prescribe rules for the administration of DCHS and the conduct of
4 its employees. He is sued in his official capacity.

5 8. Defendant James "Mickey" Gamble is the Administrator of
6 the Corrections Division of the Montana Department of Corrections
7 and Human Services. He is responsible for the administration and
8 operation of all the prison facilities in Montana and for the
9 health, safety and welfare of the persons incarcerated there. He
10 is sued in his official capacity.

11 9. Defendant Mike Mahoney is Deputy Warden of the Montana
12 State Prison and is responsible for the implementation of laws,
13 regulations and policies applicable to the prison and is in charge
14 of the day-to-day operation of the prison and the day-to-day
15 supervision of prison employees and prisoners. He is sued in his
16 official capacity.

17 10. At all times relevant hereto, each of the defendants are
18 acting under color of state law and pursuant to their authority as
19 officials and/or employees of the State of Montana and as
20 officials and/or employees of the Department of Corrections and
21 Human Services.

22 CLASS ACTION

23 11. The named plaintiffs seek to maintain this action on
24 behalf of themselves and all others similarly situated pursuant to
25 Rules 23 (a) and 23 (b) of the Federal Rules of Civil Procedure.
They represent a class of persons who are currently or may in the

1 future be incarcerated by the DCHS at the Montana State Prison or
2 Warm Springs expansion unit and who, in the absence of the relief
3 requested below, have been or will be treated in the manner set
4 forth below.

5 12. The members of the class which plaintiffs represent
6 include 1200 prisoners currently incarcerated either at the
7 Montana State Prison or the Warm Springs expansion unit. As such,
8 the members of the class are so numerous that joinder of all
9 members is impracticable.

10 13. There are questions of law and fact common to the class.

11 14. The claims of the representative parties are typical of
12 the claims of the class.

13 15. The representative parties will fairly and adequately
14 protect the interests of the class.

15 16. The prosecution of separate actions by individual
16 members of the class would create a risk of:

17 a. inconsistent or varying adjudications with respect
18 to individual members of the class which would establish
19 incompatible standards of conduct for the party or parties
20 opposing the class, or;

21 b. adjudications with respect to individual members of
22 the class which would as a practical matter be dispositive of the
23 interests of the other members not parties to the adjudications or
24 substantially impair or impede the ability to protect their
25 interests.

GENERAL FACTUAL AND LEGAL ALLEGATIONS

17. This is a civil rights action brought on behalf of the plaintiffs and on behalf of all prisoners who are now or will be in the future confined to the custody of the defendants at the Montana State Prison at Deer Lodge and at the expansion unit at Warm Springs State Hospital.

18. Plaintiffs seek declaratory and injunctive relief from policies and procedures and from cruel and abusive conditions of confinement imposed by defendants that violate rights guaranteed to plaintiffs by the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution.

19. Defendants deny prisoners access to adequate medical, dental, and mental health care in violation of the Eighth and Fourteenth Amendments to the United States Constitution.

20. The prison is dangerously overcrowded and replete with environmental, fire safety and security related hazards. Confinement under these conditions jeopardizes the safety of the prisoner population in violation of the Eighth and Fourteenth Amendments of the United States Constitution.

21. Prison policy regarding classification, treatment and programming of prisoners, as written, as applied, or both, violates the Fourteenth Amendment to the United States Constitution.

22. Prison policy pertaining to good time, as written, as applied, or both, violates the Fourteenth Amendment to the United States Constitution.

1 23. The requirements of the sex offender program are
2 humiliating and degrading. Completion of the program as a
3 condition of parole violates the First, Fourth, Fifth, Eighth and
4 Fourteenth Amendments of the United States Constitution.

5 24. Conditions and practices in the Maximum Security and
6 protective custody units are oppressive and unduly harsh.
7 Confinement in these units violate the Eighth and Fourteenth
8 Amendments of the United States Constitution.

9 25. Prison officials fail to comply with the requirements of
10 the Americans With Disabilities Act, Title 42 U.S.C. § 12101, et
11 seq., by not having sufficiently adequate housing and programs for
12 disabled prisoners.

13 26. The policies, procedures and conditions as more
14 particularly described below, contributed in part to the riot
15 which occurred in the Maximum Security Unit at the Montana State
16 Prison on September 22, 1991, in which five prisoners were
17 murdered in the Maximum Security Unit, and after which corrections
18 officers stripped, flex cuffed, physically abused, assaulted,
19 humiliated, beat and even tortured prisoners who had been housed
20 in Maximum Security at the time of the riot. The vast majority of
21 these prisoners had no involvement and took no part in the riot.
22 Despite the loss of life and damage resulting from the riot, many
23 of the offending conditions and practices in effect at the prison
24 at the time of the riot continue unabated.

25 27. Failure to rectify the constitutional violations as more
particularly described below, will cause continuing violations of

1 constitutional rights and undermine the morale of both prison
2 staff and prisoners and will thereby continue to threaten the
3 physical well-being of both prisoners and prison staff.

4 28. As a proximate result of the defendants' policies,
5 practices, procedures, acts and omissions, plaintiffs have
6 suffered and will continue to suffer immediate and irreparable
7 injury, including physical and psychological injury, deprivation
8 of liberty interests and violations of their constitutional and
9 statutory rights.

10 29. Plaintiffs have no plain, adequate or complete remedy at
11 law to redress the wrongs described in this Complaint.

12 30. Plaintiffs will continue to be irreparably injured by
13 the policies, practices, procedures, acts and omissions of
14 defendants unless this Court grants the injunctive and declaratory
15 relief that plaintiffs seek.

16 ACCESS TO MEDICAL, DENTAL AND MENTAL HEALTH CARE

17 A. Medical

18 31. There are an inadequate number of appropriately
19 trained medical staff to attend to the prisoner population. The
20 services of a single physician and a skeleton nursing and support
21 staff are not sufficient to meet the needs of the approximately
22 1200 prisoners at MSP. As a result, emergency, routine and basic
23 preventive care are inadequate.

24 32. Health care services have been completely
25 disorganized with virtually no leadership or system of authority.
Comprehensive policies and protocols for the delivery of medical

1 care have not been adopted. The infirmary is not operated in
2 conformity with generally accepted professional standards, and
3 medication distribution is left to correctional officers.

4 33. Additionally, there is no system for accountability
5 and supervision in making treatment decisions. In many cases a
6 physician's assistant is responsible for the care and treatment of
7 prisoners with serious medical conditions such as coronary artery
8 disease, AIDS or diabetes, although a physician's assistant lacks
9 the necessary expertise to treat such conditions. Moreover, there
10 is little or no physician supervision of the decisions of the
11 physician's assistant as required by Title 37, Chapter 20, MCA.

12 34. As a result of the staff shortages, Montana State
13 Prison officials rely on a poorly conceived triage system that is
14 non-responsive and fraught with long delays and inappropriate
15 treatment decisions. Medical staff routinely do not see prisoners
16 who need to be seen, except in emergency cases and frequently
17 after many requests by prisoners and unit staff.

18 35. Access to necessary medical care is initiated by an
19 obtuse, bureaucratic, "kite" system in which the prisoner sends a
20 note requesting medical care. Preliminary determinations as to
21 the need for medical care are slow and often made without medical
22 examination of the prisoner. Under this system, prisoners who are
23 disabled or are unable to describe their complaints or symptoms
24 accurately, are frequently overlooked by MSP's medical staff.

25 36. The implementation of the policy requiring
prisoners to purchase over-the-counter medications and products

1 erects a further barrier to access. Sick call requests are
2 routinely returned to prisoners (without being seen) with
3 instructions to purchase a product from the commissary/canteen.
4 Moreover, no allowance is made for prisoners with insufficient
5 funds to purchase the medications.

6 37. The facility does not perform mandatory
7 tuberculosis testing upon admission and does not follow the
8 Federal Center for Disease Control (CDC) guidelines for the
9 control of tuberculosis in correctional facilities. Failure to
10 follow CDC guidelines for tuberculosis control poses an immediate
11 and unacceptable risk of the spread of that disease.

12 38. Additionally, continuity of care, routine follow-
13 up, and monitoring of prisoners with chronic as well as life-
14 threatening conditions, such as diabetes, hypertension, and
15 epilepsy is seriously lacking. There are no regular examinations
16 of prisoners over fifty years old. Further, prison officials
17 routinely deny prisoners treatment even when such treatments are
18 recommended by qualified outside independent medical doctors.
19 This method of addressing prisoner health care creates a pervasive
20 risk of harm to sick and injured prisoners. MSP's provision of
21 necessary subspecialty medical services is also inadequate due to
22 unnecessary delay and monitoring by MSP health staff.

23 B. Dental

24 39. The dental department is inadequately staffed to
25 meet the needs of the population. As a result, prisoners with
serious dental conditions must typically wait three to six months

1 before being seen by the dentist. The current waiting list is
2 between 300 and 400 prisoners.

3 C. Mental Health

4 40. The mental health program is inadequately staffed
5 to meet the needs of the population. The mental health staff is
6 primarily involved in the sex-offender treatment program and in
7 preparing admission and parole evaluations. This leaves the part-
8 time efforts (two visits per month) of a consulting psychiatrist
9 to tend to the facility's day-to-day mental health needs. By
10 conservative estimates, there are probably between 60 and 100
11 seriously mentally ill prisoners at MSP, with an additional 200-
12 400 with secondary mental health conditions. A full 10% of the
13 prisoners are currently on some form of psychotropic medication.
14 The staff has failed to identify the majority of seriously
15 mentally ill prisoners. Even when a prisoner has been identified
16 as seriously mentally ill, the prisoner is locked in his cell
17 virtually all day, without meaningful treatment.

18 CROWDING, PHYSICAL PLANT, ENVIRONMENT,
19 AND FIRE SAFETY

20 41. The Montana State Prison is operating at approximately
21 40% over capacity.

22 42. MSP officials have provided information which indicates
23 that the operational capacity of the prison is 850 prisoners. The
24 Montana legislature has adopted legislation requiring a reduction
25 to 850. The present population is 1170, with projections to
increase to 1500 in the next one to three years.

1 43. On the more restrictive high-side of the prison, two of
2 the three buildings are primarily double-celled, with two
3 prisoners sharing a cell designed for one. These prisoners spend
4 approximately 16-20 hours locked in their cells each day.

5 44. On the less restrictive low-side, most of the prisoners
6 are crammed into three dormitory-style housing units comprised of
7 separate modules designed for eight persons, but confining
8 thirteen. Each module is equipped with only one shower, one
9 toilet, one urinal and one wash basin. The fourth building on the
10 low side has approximately 86 individual rooms of which 144
11 prisoners must share. Toilet and shower facilities are also
12 inadequate to support this population.

13 45. The housing units are inadequately lighted, ventilated,
14 and lack even the most basic fire safety precautions. Only three
15 of the seven housing units are sprinkled.

16 46. The crowded conditions at the MSP make living conditions
17 unbearable for prisoners and can be a major factor in creating
18 violence. The overcrowding combined with the absence of the most
19 rudimentary fire safety precautions creates a significantly high
20 risk of danger in the event of an emergency, such as a fire or
21 prison disturbance.

22 INMATE CLASSIFICATION, TREATMENT AND PROGRAMS

23 47. Six prisoner custody levels at Montana State Prison
24 exist. These custody levels range from extremely tight
25 supervision to trustee status. The highest custody level is
"maximum custody" reserved for such prisoners who typically

1 include: death row prisoners; assaultive, rebellious, disruptive
2 or predatory prisoners who require strict control and supervision;
3 prisoners requiring segregation because of special dangers they
4 may pose to themselves or others; "temporary lockup" prisoners
5 facing disciplinary committee hearings for serious rules
6 infractions, prisoners serving detention for disciplinary hearing
7 sentences, and prisoners who have escaped from close or maximum
8 security within the last five years. The lowest level is "minimum
9 II custody" and includes typically, prisoners with less than two
10 years to parole or discharge and prisoners with exemplary records
11 of dependability or trustworthiness and no history of escape.

12 48. The objectives of the prisoner classification system at
13 Montana State Prison are to protect the public, to safeguard the
14 well-being of the prisoner, to assure the effective operation of
15 the institution and to maximize the likelihood of rehabilitation
16 by assuring that prisoners are assigned to proper programs and an
17 appropriate level of custody.

18 49. It is the express institutional policy of Montana State
19 Prison to assign prisoners to the least restrictive level of
20 custody consistent with maintaining the order of the institution,
21 protection of the prisoner, and protection of the community. It
22 is further the policy of the prison to classify prisoners in order
23 to maximize the use of programs and to facilitate prisoner
24 rehabilitation and successful re-entry into the community.

25 50. Classification and treatment decisions are arbitrarily
made. Although there are plans to implement a new objective based

1 classification program developed by the National Institution of
2 Corrections, it remains to be seen whether it will be implemented
3 free of the abuse and arbitrariness characteristic of the current
4 system.

5 51. The classification and treatment team establishes
6 arbitrary and unrealistic treatment plans that affect the
7 prisoners parole eligibility.

8 52. The classification and treatment team does not
9 adequately communicate with the parole board to ascertain their
10 requirements for program participation.

11 53. In addition, the facility does not have sufficient
12 programs to meet the program requirements of the parole board in a
13 timely manner. Prisoners must frequently wait for months and
14 years to participate in programs that have been imposed as a
15 condition of parole.

16 54. A prisoner's classification determines which of the
17 prison programs are available to him.

18 55. A prisoner's classification determines the extent of the
19 privileges accorded to him, including such privileges as
20 visitation, recreational opportunities, educational programs, work
21 assignments and yard privileges.

22 56. A prisoner's classification determines the minimum good
23 time allowance credited to the prisoner's sentence.

24 57. Classification criteria are vague and poorly understood
25 by both prison staff and prisoners. Prisoners are frequently

1 classified arbitrarily and without regard to the policies, goals
2 and criteria required by prison policy.

3 58. Prisoners are frequently reclassified, even to maximum
4 security, for minor infractions in violation of both prison
5 classification policy and prison disciplinary policy. Prisoners
6 reclassified to a lower custody level by prison authorities
7 frequently wait weeks and even months to be transferred to a
8 lesser custody unit within the prison.

9 SECURITY

10 59. In the aftermath of the Montana State Prison riot of
11 September 22, 1991, Montana officials contracted with the National
12 Institute of Corrections (NIC) to conduct an assessment of the
13 circumstance surrounding the riot. The ensuing report entitled
14 "Riot at Max" (Dec. 14, 1991) contained a total of 55
15 recommendations. The first and most important recommendation was
16 to engage the services of a nationally recognized security expert
17 to conduct a comprehensive security audit of the state prison.
18 The audit was conducted and a report was issued on December 16,
19 1991. That report contains 35 recommendations of a technical
20 security nature. Many of the specific findings of that report
21 support the general findings of the NIC analysis relative to
22 security problems. According to departmental records, these two
23 documents constitute the primary frame of reference it will use as
24 a blueprint for reform at MSP and to prevent future disturbances.

25 60. A significant number of the recommendations made in
those two reports have been implemented or are being implemented.

Others remain under study and evaluation. With respect to a number of critical recommendations, however, there has been no significant progress. Until such time that the remaining recommendations are acted upon by Montana Corrections officials, their ability to provide a safe and secure facility remains compromised.

PROTECTIVE CUSTODY

61. In the aftermath of the murder of the five protective custody prisoners confined in the Maximum Security Unit at MSP, protective custody has since been relocated to the expansion unit on the grounds of the Montana State Hospital. Conditions in this unit are desolatory and devoid of any meaningful programs or other activities.

62. Montana officials have proposed relocating the Protective Custody Unit to the Maximum Security Unit at MSP. There they would be housed with the most dangerous aggressive and predatory prisoners at the prison, including a number of whom were convicted of the murders which occurred during the riot. Confinement under those circumstances poses a direct threat to the physical and psychological well being of protective custody prisoners.

63. Official and unofficial policies have been implemented by prison officials to discourage participation in the protective custody program. Prisoners in fear of their personal safety are not placed in protective custody if they refuse to specifically identify those responsible for the threats. However, even

1 disclosure of the identity of such individuals does not ensure
2 that an prisoner will be placed in protective custody. Prison
3 staff and ultimately the warden retain discretion to determine
4 whether an prisoner will be reclassified to protective custody or
5 remain in the general population. No adequate, confidential means
6 of investigating prisoner allegations of threats exists. The
7 confidentiality and security of prisoners who request protective
8 custody and the information that they provide is frequently
9 compromised by prison staff, thus further endangering prisoner
10 security.

11 64. Programs for protective custody prisoners are virtually
12 non-existent. Similarly, protective custody prisoners access to
13 medical, dental and mental health services is fraught with even
14 greater barriers than faced by the MSP population generally.

15 65. All of the above forces prisoners, in fear for their
16 personal safety, to choose between personal security and other
17 privileges, including good time, available to prisoners in general
18 population.

19 66. Current policies and practices fail to adequately
20 promote the purposes for which protective custody exists.

21 MAXIMUM SECURITY

22 67. Prisoners classified to Maximum Security for long terms,
23 including terms of several years, are offered no meaningful
24 programs or activities and are locked in their cells 22-24 hours
25 per day, depending on their level in the stratification program
described below.

1 68. Maximum Security prisoners are not given psychological
2 assessments on a regular basis. Such long term, isolated
3 confinement frequently causes serious depression and other
4 profound psychological deterioration requiring assessment and
5 treatment. To a significant extent the Maximum Security Unit has
6 become a depository for prisoners with mental health problems.

7 69. The newly initiated stratification policy operates as a
8 form of punishment, rather than a classification decision.
9 Practices in the unit are punitive and virtually indistinguishable
10 from conditions in disciplinary segregation. No meaningful
11 distinction exists between the conditions of prisoners classified
12 Level 1 or Level 4.

13 70. In theory, death row and administrative segregation
14 prisoners are allowed to move through the level system and return
15 to the general population, but in practice they are not.

16 71. The Department of Corrections has failed to develop
17 policies and practices to treat prisoners in Maximum Security
18 housing consistent with their classification status and to provide
19 meaningful programmatic activities. Prisoners are allowed 1.5
20 hours every other day in the recreation yard (weather permitting).
21 Educational and work opportunities are only marginally available.
22 Similarly, access to the law library for this population is
23 inadequate. The cite-specific paging system is unacceptable.

24 72. Prisoners are subjected to excessive, unnecessary, cruel
25 and unusual physical force and abuse, including beatings and

1 forced body cavity searches by correctional officers under Montana
2 correction officials' supervision.

3 73. Prisoners have been subjected to beatings and kicking,
4 while in chains or handcuffs, by correctional officers under the
5 supervision of Montana correctional officials.

6 74. Excessive discipline is frequently and arbitrarily
7 imposed upon prisoners in a retaliatory manner for conduct which
8 is not threatening to the security or order of the prison but
9 which is offensive to the prison staff and such disciplinary
10 actions are approved.

11 75. Prisoners have been forced to strip, in cold "strip
12 cells", and remain naked in chains or other restraints. While in
13 this condition, it is virtually impossible for prisoners to use a
14 toilet or to clean themselves. Montana correctional officials are
15 fully aware of this and have condoned these activities.

16 76. Prison staff have intimidated and harassed prisoners by
17 using threats of excessive force, name calling, and by threatening
18 to tell other prisoners that certain prisoners are informants.

19 77. Montana State Prison has no adequate procedure for
20 requiring institutional investigation or review of use of force
21 incidents or reports.

22 78. The prison disciplinary policy, as written or as
23 applied, is poorly designed and arbitrarily and poorly
24 administered in Maximum Security. Written disciplinary policies
25 are often ignored. Discipline in excess of that permitted or

1 required by written prison policy is often imposed upon prisoners
2 for minor disciplinary infractions.

3 79. Prisoner classification policy as to who is placed into
4 the Maximum Security Unit is applied arbitrarily and unequally.
5 Placement into Maximum Security results in a significant denial or
6 restriction of privileges afforded prisoners in other units. Some
7 prisoners are placed into Maximum Security for infractions while
8 others, accused of the same infraction, are not. Disciplinary and
9 classification decisions are made in an arbitrary manner and are
10 based upon personality and unbridled discretion of the prison
11 staff.

12 80. Defendant has allowed protective custody or
13 administrative segregation prisoners to be arbitrarily placed into
14 the Maximum Security Unit and thereby lose privileges afforded
15 prisoners in other units.

16 81. Prisoners classified to be in Maximum Security for long
17 terms, including terms of several years, are offered no programs
18 or activities and are required to be in their cells for 23 hours
19 per day. Such long term isolation causes serious psychological
20 problems requiring psychological assessment and treatment.
21 Prisoners do not receive adequate psychological assessment and
22 treatment.

23 82. Prisoners in Maximum Security are arbitrarily denied
24 books, magazines, and other reading materials while other units of
25 the prison have no such restrictions.

1 87. Prisoners are being deprived of good time without due
2 process because the way it is earned and calculated is so vague
3 and ambiguous as to be incomprehensible to the average prisoner.
4 Prisoners are being treated unequally because the present method
5 of awarding and deducting good time is arbitrary and subject to
6 the unbridled discretion of a handful of prison employees.

7 MONTANA SEX OFFENDER PROGRAM

8 88. The defendants single out members of the plaintiff class
9 who have been accused of any kind of sex-related misconduct or
10 "deviant" sexual behavior, characterize these plaintiffs as
11 "aggressors" and "deviants" and treat them as presumptively
12 ineligible for parole. As a prerequisite to parole eligibility,
13 the defendants require these plaintiffs to gain admission to,
14 participate in and complete the requirements of Montana's Sex
15 Offender Program, a part of which is known as the Intensive
16 Treatment Program and still another part is known as the
17 Intellectually Disabled Sex Offender Program (IDSOP).

18 89. As a requirement of these programs and a prerequisite to
19 parole eligibility, the defendants require plaintiffs periodically
20 to submit to manipulation with a penile plethysmograph. This
21 device is a gauge that measures and records changes in penis size.
22 The defendants claim that by measuring changes in penis size in
23 response to a variety of audio-visual sexual cues, they can
24 evaluate a prisoner's predilection for "deviant" sex, and predict
25 the likelihood of engaging in criminal sexual activity. Program
staff attach plaintiffs by the genitals to the device, require

1 them to masturbate to achieve a complete erection and subject them
2 to photographs and sound tracks portraying diverse sex acts which
3 they claim are "acceptable" and "deviant," e.g., consensual adult
4 heterosexual intercourse, violent rapes and other sex acts
5 involving children.

6 90. Another aspect of this program is that program staff
7 make insatiable, arbitrary, and capricious demands on plaintiffs
8 to confess to "deviant" sexual fantasies and defendants require
9 inmates to keep journals of these fantasies. Staff accuse
10 individual plaintiffs of being "in denial" if they deem their
11 accounts of these fantasies to be insufficiently graphic or lewd,
12 and threaten plaintiffs with serving out their maximum sentences
13 (or being denied parole) if the "quality" of their sexual
14 fantasies is unsatisfactory.

15 91. The defendants require plaintiffs to abandon any legal
16 challenges to, or appeals from, their convictions, and to admit
17 guilt. Plaintiffs are likewise required to admit guilt for
18 additional sex crimes, unproven or even uncharged, and without a
19 grant of immunity from prosecution. Plaintiffs are required to
20 submit to lie detector examinations with regard to their fantasies
21 and with regard to information written into journals which they
22 are required to keep. The defendants further require plaintiffs
23 to waive their right to confidentiality and permit disclosure of
24 communications obtained from them in the course of treatment.

25 92. On information and belief, the defendants use agents and
employees who are not properly licensed and qualified mental

1 health care professionals to administer the various procedures
2 described above.

3 MENTALLY AND PHYSICALLY DISABLED PRISONERS

4 93. Montana correction officials fail to maintain accessible
5 features such as elevators or ramps to ensure mobility-impaired
6 plaintiffs' ready access to fundamental sanitary facilities such
7 as toilets and showers, and to program areas. Defendants also
8 fail to provide mobility-impaired plaintiffs with wheelchairs or
9 appropriate prosthetic devices to surmount structural barriers.
10 Plaintiffs are thus substantially limited in carrying out major
11 life activities such as moving throughout the prison, showering
12 and otherwise maintaining self-hygiene, performing manual tasks,
13 eating, and learning.

14 94. Montana correction officials fail to provide necessary
15 supplies or services to attend those plaintiffs whose severe
16 physiological disorders preclude their control over bodily
17 functions.

18 95. Montana correction officials exclude physically-impaired
19 plaintiffs who suffer from such chronic illnesses as heart
20 disease, epilepsy, and respiratory disorders, from participation
21 in programs and services for which they are otherwise qualified,
22 based solely upon their disabilities. Due to their exclusion from
23 programs and services, physically-impaired plaintiffs who are
24 otherwise qualified for programming, are deprived of the
25 opportunity -- enjoyed by unimpaired plaintiffs -- to become
eligible for parole supervision or to earn good time credit.

1 96. Montana correction officials fail to make reasonable
2 program or service accommodations for mentally-impaired plaintiffs
3 who suffer from a range of disabilities from specific learning
4 disabilities to emotional illness to organic brain syndrome or
5 mental retardation. Mentally-impaired plaintiffs are thus denied
6 an opportunity to participate in programs, activities and services
7 such as recreation, education and employment based solely upon
8 their disabilities. Due to their exclusion from programs and
9 services, the condition of mentally-impaired plaintiffs
10 deteriorates in segregation cells.

11 FIRST CAUSE OF ACTION

12 97. Plaintiffs reallege and incorporate by reference
13 paragraph 1 through 46 and 59 through 83.

14 98. Defendants fail to provide plaintiffs with the basic
15 necessities of life, including adequate shelter, medical and
16 mental health care, and personal safety. The conditions in these
17 facilities are incompatible with contemporary standards of
18 decency, cause unnecessary and wanton infliction of pain and are
19 not reasonably related to any legitimate governmental objectives.
20 As a result of the defendants' deliberate indifference, prisoners
21 are thereby subjected to cruel and unusual punishment in violation
22 of the Eighth and Fourteenth Amendments to the United States
23 Constitution.

24 SECOND CAUSE OF ACTION

25 99. Plaintiffs reallege and incorporate by reference
paragraph 1 through 58 and 61 through 87.

1 100. By enforcement of the existing classification,
2 treatment, programming, the defendants deny plaintiffs their right
3 as secured by the Fourteenth Amendment of the United States
4 Constitution.

5 THIRD CAUSE OF ACTION

6 101. Plaintiffs reallege and incorporate by reference
7 paragraph 1 through 66 and 88 through 92.

8 102. By subjecting plaintiffs to the penile plethysmograph,
9 and to the other degrading, humiliating, bizarre and sadistic
10 practices employed in the Montana Sex Offender Program, the
11 defendants needlessly inflict pain on the plaintiffs and wantonly
12 expose them to emotional and psychological pain and suffering, in
13 violation of the Eighth Amendment to the U.S. Constitution.
14 Further, these practices unjustifiably burden plaintiffs' exercise
15 of their fundamental rights under the First, Fourth, Fifth, Ninth
16 and Fourteenth Amendments, including the right to freedom from
17 coerced speech; freedom from unreasonable searches and seizures
18 and compulsory self-incrimination; freedom from outrageous and
19 shocking intrusions upon bodily integrity; and the rights to
20 substantive due process, privacy, and the inviolability of one's
21 thoughts.

22 FOURTH CAUSE OF ACTION

23 103. Plaintiffs reallege and incorporate by reference
24 paragraph 1 through 66 and 93 through 96.

25 104. Defendants have discriminated against members of the
plaintiff class with physical or mental disabilities, by excluding

1 them from participation in, or denying them the benefits of,
2 programs, activities and services for which these plaintiffs are
3 qualified, or for which they would be qualified with reasonable
4 accommodation to their disabilities; and by failing to take
5 reasonable measures to make prison facilities readily accessible
6 to and usable by plaintiffs with impaired mobility and other
7 physical disabilities. These acts and omissions violate the
8 rights of disabled plaintiffs under the Americans with
9 Disabilities Act, 42 U.S.C. § 12101, et. seq.

10 CLAIMS FOR RELIEF

11 WHEREFORE, plaintiffs pray for the following relief:

12 1. That this Court determine that this action will be
13 maintained as a class action for the purposes of issuing
14 declaratory and injunctive relief, such class consisting of all
15 present and future prisoners confined at the Montana State Prison
16 and in the Warm Springs expansion unit.

17 2. That this Court declare:

18 a. that MSP is overcrowded and environmentally unsafe
19 in violation of the Eighth Amendment of the United States
20 Constitution;

21 b. that prevailing medical, mental health, and dental
22 practices subjects prisoners to cruel and unusual punishment in
23 violation of the Eighth Amendment of the United States
24 Constitution;

1 c. that security at MSP and conditions in protective
2 custody and Maximum Security violate the Eighth Amendment of the
3 United States Constitution.

4 d. that there are inadequate program opportunities and
5 that the prison classification, treatment and good time policies,
6 as written and applied, violate the Fourteenth Amendment of the
7 United States Constitution;

8 e. that the prison sex offender program as written and
9 applied violates the First, Fourth, Fifth, Eighth and Fourteenth
10 Amendments of the United States Constitution;

11 f. that the provisions of the Americans With
12 Disabilities Act are being violated;

13 g. that as a proximate result of the policies,
14 practices, procedures, and acts complained of herein, plaintiffs
15 have suffered, continue to suffer and will suffer in the future
16 immediate and irreparable injury, including physical and
17 psychological injury, deprivation of liberty interests and
18 violations of their civil and statutory rights;

19 h. that plaintiffs have no plain, adequate or complete
20 remedy at law to redress the wrongs they have, are, or will
21 suffer;

22 i. that plaintiffs will continue to be irreparably
23 injured by the policies, practices, procedures, and acts of
24 defendant unless this Court grants injunctive and declaratory
25 relief.

1 3. That this Court issue a permanent injunction, enjoining
2 the defendants, their agents, employees and successors:

3 a. from subjecting prisoners to cruel and unusual
4 punishment, and requiring the defendants to implement policies and
5 provide resources to remedy the violations and to review
6 violations when they occur;

7 b. from the enforcement of arbitrary classification,
8 treatment, program and good time policies, and requiring that
9 those policies be written and applied in a manner consistent with
10 constitutional requirements;

11 c. from the operation of the sex offender program;

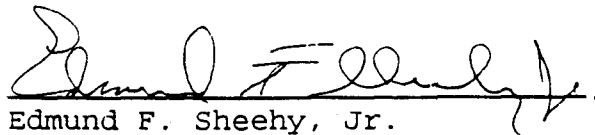
12 d. from failing to conform with the requirements of
13 the Americans With Disabilities Act;

14 e. from continuing violations of constitutional and
15 statutory rights as described herein and making continued
16 violations of those constitutional rights punishable as contempt
17 of Court.

18 4. That plaintiffs be awarded costs and attorney's fees for
19 this action pursuant to 42 U.S.C. §1988 and any other appropriate
20 statute.

21 5. For such other and further relief as this Court may deem
22 just and proper.

1 DATED this 30th day of December, 1993.

2
3 

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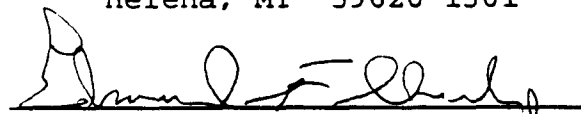
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24 CERTIFICATE OF SERVICE

25 This is to certify that the foregoing Fifth Amended Complaint
was duly served upon all parties of record by mailing a copy
thereof, postage prepaid, to them or their attorneys at their
address set forth below on the 30th day of December, 1993.

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