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MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

ROBERT DOE, a minor, through his next
friend, JOHN MADSEN,

Plaintiff,

v.

STATE OF MONTANA, MONTANA
DEPARTMENT OF CORRECTIONS;
MICHAEL FERRITER, Director, Montana
Department of Corrections, in his official
capacity; MICHAEL MAHONEY, Warden,
Montana State Prison, in his official capacity;
DR. DAVID SHAEFER, M.D., Chief
Psychiatrist, Montana State Prison, in his
official capacity,

Defendants.

Cause No. _____

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF AND REQUEST
FOR PRELIMINARY INJUNCTION
HEARING**

COMES NOW Plaintiff, ROBERT DOE, a minor child, through his next friend John Madsen, by and through his attorneys, and for his complaint against Defendants, alleges as follows:

I. PRELIMINARY STATEMENT

1. Robert Doe is a 17 year-old youth who was severely abused and neglected as a child, has a history of mental illness, and has been incarcerated at Montana State Prison (MSP) since February 25, 2008, when he was just barely 16 years of age. Throughout his confinement at MSP, Plaintiff has and continues to be subjected to punitive solitary confinement; placed on barbaric and inhumane Behavior Management Plans (BMPs); electronically Tasered repeatedly without reasonable basis; pepper sprayed despite his documented condition of asthma; and treated in a cruel, inhuman and degrading manner, all of which have exacerbated his mental illness, caused him to relive traumatic events of his childhood and caused him to deteriorate psychologically and physically. On at least 2 occasions during his incarceration, Plaintiff has been so traumatized and anxious that he has attempted suicide by biting through his wrist until he was able to puncture a vein.

2. Defendants are aware that Plaintiff has been diagnosed multiple times by multiple providers with mental illness. Defendants are aware that Plaintiff suffered physical and emotional abuse and neglect during childhood. Defendants are aware that Plaintiff has been diagnosed with Posttraumatic Stress Disorder and Major Depressive Disorder, among other diagnoses. Defendants are aware that they diagnosed Plaintiff with Posttraumatic Stress Disorder upon his entry into adult corrections. Yet Defendants have concluded, without adequate assessment or reasonable basis, that Plaintiff does not have mental health issues that would preclude use of solitary confinement and harsh BMPs. In spite of Plaintiff's documented

mental illness and his youth, Defendants have subjected Plaintiff to solitary confinement, excessively cruel BMPs, and unsafe conditions. With deliberate disregard for Plaintiff's documented mental illness, Defendants have failed to provide necessary mental health treatment.

3. Defendants are aware that adolescents are at overwhelming risk of being victimized in an adult prison setting, yet have not placed Plaintiff in a separate facility for juveniles, provided him protection from predators, or given him any special consideration as a juvenile. Instead, Defendants have placed him in the most restrictive, harshest conditions possible at MSP: the restricted administrative segregation unit, also known as the Special Housing Unit (SHU) within MSP's Maximum Security Unit. As a result of his placement in the SHU program, Plaintiff has been deprived of virtually all human interaction. Since March 2009, he has been locked in a solitary cell all but 5 to 6 hours per week. He is not allowed to participate in vocational or recreational programs. Defendants have failed to provide educational services, despite that Plaintiff has only completed the ninth grade. He is not allowed any personal visits or telephone contact with his family until he maintains 12 months of clear conduct in SHU. His age and his mental illness, combined with the harsh, punitive conditions of confinement and the degrading, dehumanizing treatment he receives, will make it virtually impossible for him to maintain 12 months of clear conduct. Absent judicial intervention, it is predictable that Plaintiff will serve the remainder of his 5-year sentence in total isolation: without visits or phone calls and without educational, vocational or other programs.

4. Plaintiff brings this civil rights action to challenge conditions of confinement that have caused, and continue to cause, him severe psychological harm, humiliation, and physical injury. He seeks a declaratory judgment that the actions of the State of Montana and the Department of Corrections (DOC) violate his state and federal constitutional rights to be free from cruel and

unusual punishment; his state constitutional rights of dignity, privacy, and education; his state constitutional and statutory right to reformation and rehabilitation; and customary international law which prohibits torture and other forms of cruel, inhuman or degrading treatment or punishment and guarantees him a right to effective rehabilitation.

5. Plaintiff seeks injunctive relief to require the State of Montana and DOC to cease its unconstitutional, harmful and punitive practices and policies, to provide adequate mental health care, and to provide a safe, humane and rehabilitative environment in which to serve his criminal sentence. If given these remedies, there is a strong likelihood he can become a productive, non-violent, emotionally mature adult who could lead a normal life. Without these remedies, there is a strong likelihood he will develop Antisocial Personality Disorder and be imprisoned the rest of his life. Without these remedies, there is also a very significant risk he will commit suicide in prison.

II. JURISDICTION AND VENUE

6. The District Court has jurisdiction over all civil matters pursuant to Article VII, Section 4 of the Montana Constitution. This Court has jurisdiction to grant injunctive relief pursuant to Mont. Code Ann. § 27-19-101. This Court has jurisdiction to grant declaratory relief pursuant to Mont. Code Ann. § 27-8-201,

7. Administrative remedies have been exhausted. Plaintiff has exhausted the internal MSP grievance procedure.

8. This action is also brought pursuant to 42 U.S.C. § 1983 in that the Defendants, through their policies, practices, customs and omissions, have deprived Plaintiff of rights, privileges and immunities guaranteed to him by the United States Constitution and by customary

international law. Customary international law has been held, since the adoption of the U.S. Constitution, to comprise part of the laws of the United States.

9. Venue is proper in the First Judicial District of the State of Montana pursuant to Mont. Code Ann. § 25-2-125 because the State of Montana is a named party.

III. PARTIES

10. Plaintiff Robert Doe is a 17 year-old Montana youth, who has had a traumatic childhood and a long history of being diagnosed with mental illness. He is incarcerated under the supervision of the Montana Department of Corrections and is confined in the Special Housing Unit within the Maximum Security Unit at Montana State Prison.¹ He is the real party in interest and brings this action through his next friend, John Madsen. John Madsen, a social worker, is a resident of Helena, Montana.

11. Defendant State of Montana is a political entity created and governed for and by the people of the State.

12. Defendant Montana Department of Corrections is an agency of the State of Montana created under Article XII, Section 3 and Article VI, Section 7 of the Montana Constitution. Defendant Montana Department of Corrections is a principal functional and administrative entity created within the executive branch of state government operating pursuant to Mont. Code Ann. §§ 2-15-101, 2-15-102, and 2-15-2301.

13. Defendant Montana Department of Corrections is charged by Montana law with developing and maintaining comprehensive services and programs in the field of adult and youth corrections, and in operating those services and programs in a constitutional manner. Defendant Montana Department of Corrections must administer its programs in a manner that “encourage[s]

¹ Pursuant to the Montana privacy rules, the name “Robert Doe” is a pseudonym and his precise date of birth is not identified.

and provide[s] opportunities for the offender’s self-improvement to provide rehabilitation and reintegration of offenders back into the community.” Mont. Code Ann. § 46–18–101(2)(d). Defendant Montana Department of Corrections operates Montana State Prison (MSP), a state correctional facility located in Deer Lodge, Montana. The primary function of MSP is to provide for the custody, treatment, training, and rehabilitation of adult male criminal offenders.

14. Defendant Mike Ferriter is the Director of the Montana Department of Corrections and is named in his official capacity.

15. Defendant Mike Mahoney is the Warden of the MSP and is named in his official capacity.

16. Defendant David Shaefer, M.D., is the Chief Psychiatrist at the MSP and is named in his official capacity.

IV. FACTUAL ALLEGATIONS

Plaintiff’s Traumatic Childhood Experiences and Mental Illness

17. As a young child, Plaintiff Robert Doe was severely physically abused, emotionally abused, and neglected. His father beat him with belt buckle ends and wire clothes hangers, and encouraged Plaintiff’s half-siblings to beat him with baseball bats. Plaintiff’s father locked him in his room for days or a week at a time and verbally degraded him.

18. Plaintiff’s childhood has been marked by instability, familial separations and multiple placements that have included: residence with his mother until age 6; residence with his father until age 11; residence with his mother again; residence with his maternal grandmother; placement in foster care; a series of institutional placements at Yellowstone Boys and Girls Ranch, Laurel Ridge Treatment Center, and New Day Treatment Programs; placement at Pine

Hills Correctional Facility; then placement in adult corrections at age 15, first at the Missoula Assessment and Sanction Center (MASC, then at Montana State Prison (MSP).

19. Throughout his youth and adolescence, Plaintiff has received numerous mental illness diagnoses, including Posttraumatic Stress Disorder (PTSD); Early Onset Dysthymia Disorder; Major Depressive Disorder; Attention–Deficit Hyperactivity Disorder; and Mood Disorder. Throughout this time, Plaintiff has been prescribed numerous psychiatric medications. His psychological conditions have caused, and continue to cause, physical conditions.

20. Defendants have disregarded Plaintiff’s prior mental illness diagnoses. Defendants have determined, without adequate assessment or reasonable basis, that Plaintiff has no mental health issues that would preclude placement in solitary confinement in the Special Housing Unit (SHU) at MSP or that would preclude utilization of Behavior Modification Plans (BMPs). Defendants have concluded, without adequate assessment and reasonable medical certainty, that Plaintiff is malingering and has Antisocial Personality Disorder.

Plaintiff’s Incarceration

21. When Plaintiff was 15 years old and in Pine Hills Correctional Facility, he pled guilty to two counts of assault on a peace officer, resulting from a physical altercation with two correctional officers at Pine Hills. As part of his plea agreement, he was transferred to adult court and sentenced to the Montana Department of Corrections’ (DOC) custody for 5 years, with the District Court recommending that Plaintiff be placed in DOC’s 3-month Boot Camp Program, then be eligible for parole for the remainder of his sentence.

22. In September 2007, Defendants confined Plaintiff in the Missoula Assessment and Sanction Center (MASC) for evaluation and classification. That same month, Plaintiff was evaluated by a licensed clinical psychologist who recommended continued psychiatric treatment

with mood stabilizing medications and broad-spectrum mental health services throughout the remainder of his life.

23. In October 2007, Defendants placed Plaintiff on 30 days disciplinary detention in MASC's Maximum Security Unit. Plaintiff reported to MASC staff that the isolation was making him more depressed and that he doubted he could withstand the conditions of isolation.

24. During his 6-month confinement at MASC, Plaintiff verbalized his intent to harm himself and was placed on suicide watch on at least one occasion. Defendants did not place Plaintiff in a separate juvenile facility or otherwise consider his special status as a juvenile, even though he was only 15 years old at the time.

25. Defendants did not allow Plaintiff to go to Boot Camp as recommended by the Court. They transferred him to MSP on February 25, 2008. He had just turned 16 years of age the month before his transfer.

Conditions of Confinement at MSP

26. Throughout the time of his confinement at MSP, Plaintiff has been placed in high security classification amongst the worst adult offenders. He was first placed in the general population in MSP's High Security Unit ("High Side") where he was a target for adult offenders. Defendants are aware or should be aware that adolescent boys will be targeted as victims in the adult prison setting. Defendants are aware or should be aware that potential victims will be forced to fight to protect themselves in this setting. Despite this knowledge, Defendants placed Plaintiff in the general population amongst the worst adult offenders, where his only choice was to fight or be victimized. Defendants have failed to place him in a separate facility for juveniles, provide him a safe environment in which to serve his sentence, or give him any special consideration as a juvenile.

27. Defendants are aware that Plaintiff has been diagnosed with PTSD and that his father physically abused and neglected him. Defendants provisionally diagnosed Plaintiff with PTSD upon his admission to the adult corrections system. Despite this knowledge, Defendants placed Plaintiff on the High Side amongst the worst adult offenders where it was foreseeable that his PTSD “fight or flight” response would be triggered. There being no place to flee, it was or should have been predictable to Defendants that Plaintiff’s mental illness would cause him to react physically when threatened.

28. On March 25, 2009, Defendants transferred Plaintiff to SHU for damaging a fence in the yard inside the compound on the High Side of MSP. Since March 25, 2009, Plaintiff has been and continues to be housed in solitary confinement in SHU within the Maximum Security Unit. SHU is a minimum 2 year program and is part of MSP’s Restricted Administrative Segregation Unit.

29. In SHU, Plaintiff has suffered prolonged periods of isolated confinement and sensory deprivation. He is locked in a solitary cell 24 hours a day for 2 days a week, and 23 hours a day for 5 days a week, except for 15 minute showers 3 times a week. During the 5 hours per week allowed for outdoor exercise, Plaintiff is given solitary access to a small, fully enclosed caged pen resembling a dog kennel located within a concrete-enclosed courtyard in the shadow of the building.

30. While in SHU, Plaintiff has been and continues to be deprived of any opportunity for normal or healthy social interactions. Interaction with staff is minimal, and interaction with other inmates is virtually non-existent. Meals are delivered to his cell and Plaintiff eats alone. Interaction with family or friends is prohibited.

31. While in SHU, Plaintiff has been and continues to be denied the opportunity to participate in educational programs designed to enable him to earn a high school diploma, even though he has only completed his education through the ninth grade. Plaintiff has been and continues to be prohibited from participating in vocational, hobby and recreational programs available to inmates in the general population. Personal property, including reading material, is highly restricted.

32. Under Defendants' policies, Plaintiff must maintain 1 year of clear conduct in SHU before he will be allowed 1 visit per month and 1 15-minute phone call per month to immediate family members. Even after 1 year of clear conduct, he will still be virtually deprived of all normal human interaction. On Christmas Day 2009, Plaintiff will have spent 9 months, or approximately 275 days, in solitary confinement in SHU.

33. In addition to confining Plaintiff in SHU, Defendants have imposed disciplinary detention, in which they place Plaintiff in 24-hour detention lockdown for 30 days at a time. During a 24-hour detention lockdown, Plaintiff is placed in a cell in the Maximum Security Unit detention block. Since arriving at MSP, Plaintiff has completed almost a combined total of six months in 24-hour lockdown.

34. Since September 2008, Defendants have subjected Plaintiff to Behavior Management Programs (BMPs) that are counter-therapeutic and inhumane. A BMP is authorized for 6 months at a time and can be activated at any time during that period without additional approval or mental health clearance. The first step of a BMP lasts at least 48 hours. During this first step, Plaintiff is placed in a bare, padded cell that is constantly illuminated. He is stripped naked except for a short gown, which provides minimal coverage and warmth. He is given only a security mattress and a security blanket and is cold most of the time. He is denied regular meals,

fed only NutraLoaf, and received only minimal water. The cell in which Plaintiff is confined has dried blood and feces on the walls. A hole in the floor serves as a toilet, and there is no running water. If Plaintiff is able to maintain clear conduct the entire 48 hours, he progresses to the second step, at which time he is given regular prison clothing and a pillow. After maintaining clear conduct for 24 hours on Step 2, Plaintiff moves onto Step 3, where the water is turned on and he is given regular meals and regular bedding. If Plaintiff has any infractions during these 3 steps or even after returning to his solitary cell, he is returned to Step 1 of the BMP.

35. Defendants are aware that Plaintiff has suffered physical and emotional abuse during his childhood. Defendants are also aware that Plaintiff has been diagnosed with complex PTSD, Major Depressive Disorder, and other psychiatric conditions. Defendants diagnosed Plaintiff with PTSD when he entered the adult corrections system. Defendants' policies prohibit utilization of BMPs with inmates who have a diagnosis from Axis I of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV, American Psychiatric Association, 1994). Both PTSD and Major Depressive Disorder are Axis I diagnoses. Nevertheless, Defendants authorized the use of BMPs with Plaintiff from September 25, 2008 until September 26, 2009. Defendants subjected Plaintiff to BMPs at least 6 times during that time period.

36. Defendants know that Plaintiff has asthma and further know that utilization of pepper spray, also known as OC spray (Oleoresin Capsicum), is dangerous to his health. Pepper spray is an inflammatory that causes immediate closing of the eyes, difficulty breathing, runny nose and coughing. For persons with asthma, pepper spray can cause, and has caused, death. Nevertheless, Defendants have pepper sprayed Plaintiff on at least one occasion, causing him to suffer an asthma attack, at great risk to his personal health.

37. Defendants have subjected Plaintiff to humiliating, degrading and inhumane treatment during his confinement at MSP. In September 2008, Defendants shot Plaintiff with an electroshock gun 7 to 8 times in his shoulders, back, and legs, when he posed no immediate danger to himself or others. Plaintiff suffered burns at the points of impact and, upon being shot in the thigh, lost control of his bowels. He was placed in restraints, dropped on his bunk, and stripped naked. While naked, Plaintiff was forced to bend over at his waist and walk out onto the cell block to the control cage, in full view of all the other inmates and staff. After being examined by nurses while kneeling, Plaintiff again was forced to walk naked while bent over at his waist to his cell, where he was forced to kneel naked over his bunk – a vulnerable, humiliating position for any man but especially so for a teenage boy in a sexually predatory environment. A correctional officer ridiculed Plaintiff, telling him he stank like shit. Plaintiff was not allowed to shower until approximately 3 days later.

38. Plaintiff requires a safe environment in which to serve the remainder of his sentence. Defendants know that juveniles are especially vulnerable targets in an adult prison setting, subject to physical and sexual attack. Nevertheless, Defendants have failed to provide Plaintiff a safe environment in which to serve his sentence. The lack of safe conditions has led Plaintiff to act out behaviorally to protect himself and avoid becoming a victim. Plaintiff's behavior in response to his unsafe environment has led to more punitive and restrictive conditions for Plaintiff. There is no place in the adult prison where Plaintiff can safely serve the remainder of his sentence.

39. Defendants have failed to provide developmentally appropriate programs for Plaintiff to enable him to mature from an adolescent into an adult. Defendants have failed to provide Plaintiff with an education, despite the fact that he has been in the adult corrections system since

age 15 and despite the fact that the last grade he has completed is the 9th grade. There is no place in the adult prison where Plaintiff can safely progress through the developmental phases necessary for him to grow up and be an effective adult.

Lack of Adequate Mental Health Assessment and Treatment at MSP

40. Defendants do not recognize or treat Plaintiff's mental illness, most significantly his Axis I diagnoses of PTSD and Major Depressive Disorder. Defendants have diagnosed Plaintiff with an Antisocial Personality Disorder, contrary to professional standards that defer diagnoses of Antisocial Personality Disorder until adulthood. Defendants have also determined Plaintiff is malingering. Defendants have reached these conclusions without having conducted adequate mental health assessments and evaluations of Plaintiff.

41. Defendants have failed to provide adequate mental health treatment or programs for Plaintiff. The mental health treatment in SHU consists of a MSP mental health staff member walking through the unit once a week. During these rounds, the mental health staff member raps on each cell door and asks if the inmate has any mental health concerns. If an inmate has a mental health issue he is forced to yell his mental health concerns through the cell door, within hearing range of other inmates.

42. Plaintiff has had significant difficulty sleeping and eating; he has feelings of depression, anxiety, worthlessness, and despair. At times he feels so despondent that he is overcome with paranoia and suicidal thoughts. Plaintiff would benefit from medication for treatment of his sleep disorder that Defendants have refused to prescribe for him.

43. Plaintiff is a juvenile who is still developing physically, psychologically, and emotionally. His character and personality are not fully formed. Plaintiff's past assaultive behavior has been primarily reactive, when his PTSD is triggered by the stressors of his

environment, intense personal interactions with authority figures, or threats to his personal safety and bodily integrity.

44. Given appropriate mental health treatment, safe and humane conditions that do not continually re-enact the traumas of his childhood, and developmentally appropriate programs, Plaintiff has the capacity to grow and develop into a psychologically healthy, productive adult. He has the potential to develop skills for coping with his childhood traumas in an appropriate way, rather than a physically reactive way. Defendants' failure to provide mental health treatment, safe and humane conditions, and developmentally appropriate programs are substantially hindering Plaintiff's ability to mature from adolescence to adulthood and depriving Plaintiff of his potential to attain a mature understanding of his own humanity.

45. The lack of mental health treatment, the conditions of SHU, the imposition of BMPs, and generally harsh, unsafe conditions all operate separately and collectively to exacerbate Plaintiff's mental illness and prevent him from developing and growing into a psychologically healthy adult.

46. Defendants' treatment of Plaintiff is contrary to the National Commission on Correctional Health Care (NCCHC) *Standards for Health Services in Prisons* and *Standards for Mental Health Services in Correctional Facilities*. NCCHC recognizes that adolescents require additional health services in correctional facilities because they are continuing to grow and develop both physically and emotionally. NCCHC also recommends that inmates who have little or no contact with other individuals should be monitored daily by medical staff and at least once a week by mental health staff.

Harm Suffered by Plaintiff Due to His Conditions of Confinement

47. The psychological stress of solitary confinement, BMPs and generally harsh, unsafe conditions on Plaintiff, who is both a juvenile and a person with mental illness, subjects Plaintiff to feelings of depression, despair and anxiety so intense that he has attempted suicide twice. After being moved to SHU, Plaintiff twice bit through the skin on his wrist until he was able to puncture a vein. During one of these incidents, he sprayed his blood on the window and walls of his cell. These instances of self-harm did not result in psychological or psychiatric help from Defendants. Instead they resulted in BMPs which are not therapeutic and are not a substitute for mental health assistance.

48. The psychological stress of solitary confinement, BMPs and generally harsh, unsafe conditions on Plaintiff have caused him to act out to obtain temporary escape from his cell or temporary human contact, even though these behaviors trigger punishment and imposition or restarting of BMPs. For example, Plaintiff has flooded his cell merely so he could be outside of the cell for 30 minutes while it was being cleaned, which then resulted in restarting his BMP.

49. Conditions of confinement imposed by Defendants significantly increase the likelihood that Plaintiffs will engage in behavior that results in further punishment. When Plaintiff incurs infractions, Defendants impose the same or harsher conditions that contributed to his acting out in the first place. With this vicious cycle in place, Plaintiff will be unable to maintain clear conduct for the length of time necessary to ever leave solitary confinement in SHU or avoid the imposition of BMPs throughout the entirety of his 5 year sentence.

Defendants' Acts and Omissions Have Caused Plaintiff Substantial Harm

50. Defendants, their agents, and their employees have failed to provide constitutionally required mental health treatment, and have no legitimate penological or other reason for

depriving Plaintiff of such treatment. Defendants, their agents and employees either knew or should have known of Plaintiff's mental illness and his need for appropriate mental health treatment. Defendants have knowingly and with deliberate indifference failed to provide Plaintiff appropriate mental health treatment.

51. Defendants, their agents, and their employees have implemented unconstitutional policies, practices, and customs that deprive Plaintiff of constitutionally required mental health care, resulting in significant and serious harm to and suffering by Plaintiff.

52. Defendants have failed to properly investigate and supervise the incarceration of Plaintiff, resulting in failure to provide Plaintiff adequate mental health care.

53. Defendants, their agents, and their employees failed to properly train, supervise, or control their agents and employees who participated in denying Plaintiff proper mental health care.

54. Defendants have unconstitutionally subjected Plaintiff, as a juvenile, to the conditions of the High Side, SHU and to BMPs. Plaintiff's psychological, emotional, and intellectual development is seriously impaired due to the unconstitutional conditions and treatment by Defendants.

55. Defendants, their agents, and their employees have implemented unconstitutional policies, practices, and customs that deprive Plaintiff of safe, humane conditions of confinement, resulting in significant and serious harm to and suffering by Plaintiff.

56. Defendants have failed to properly investigate and supervise the incarceration of Plaintiff, resulting in failure to provide Plaintiff safe, humane conditions and consider his special vulnerability as a youth incarcerated an adult prison.

57. Defendants have failed to properly train, supervise, and control their agents and employees who directly supervise Plaintiff's incarceration with respect to special considerations due to his youth.

Irreparable Harm

58. Defendants have knowingly and with deliberate indifference subjected Plaintiff to a substantial risk of serious, irreversible mental, emotional, and physical harm.

59. Defendants actions and inactions, and conditions of confinement imposed and perpetuated by Defendants, including but not limited to imposition of solitary confinement in SHU, imposition of cruel, punitive BMPs, degrading and inhumane treatment, lack of developmentally appropriate programs, lack of educational opportunities, lack of interactions of a healthy kind, unsafe conditions, and inadequate mental health care exacerbate his mental illness and inflict significant psychological harm. If the conditions of confinement are allowed to continue, there is a substantial risk the psychological harm and exacerbation of his mental illness could become permanent and irreversible. In particular, there is a significant danger that, if his conditions of confinement are allowed to continue, Plaintiff's PTSD will be extremely disabling to him as an adult.

60. Conditions of confinement imposed and perpetuated by Defendants, if allowed to continue, will stunt his development and growth. There is a strong likelihood that the conditions of confinement imposed and perpetuated by Defendants will lead to Plaintiff's psychosocial destruction, cause him to develop Antisocial Personality Disorder and result in a life of imprisonment. There is a strong likelihood these conditions of confinement will cause Plaintiff to take his own life in the prison setting.

61. With appropriate, humane, respectful conditions of confinement and appropriate mental health treatment, the prognosis is good for Plaintiff to learn to cope with the effects of his childhood traumas, achieve greater psychological health and conform his behavior to societal expectations. There is a strong likelihood that, given appropriate conditions and mental health services, Plaintiff will gain the skills and emotional self-regulation necessary to curtail his reactive physical behaviors when his PTSD is triggered by outside forces.

62. The injuries suffered by Plaintiff are capable of repetition, yet may evade review, rendering injunctive and declaratory relief appropriate.

V. CAUSES OF ACTION

First Claim for Relief (Cruel and Unusual Punishment, Montana Constitution)

Plaintiff incorporates by reference all allegations in paragraphs 1 through 64 as though fully set forth herein.

63. Defendants, through the policies, practices, acts, customs and omissions, and the conditions of confinement maintained at MSP, subject Plaintiff, as a youth, to a substantial risk of serious mental, emotional and physical harm. Defendants have acted with deliberate indifference to Plaintiff's needs as a youth and with conscious disregard for the substantial risk of serious harm to Plaintiff's health and safety. The foregoing actions and inactions, as applied to Plaintiff, a youth, violate Article II, Section 22 of the Montana Constitution's prohibition of cruel and unusual punishment.

64. Defendants, through the policies, practices, acts, customs and omissions, and the conditions of confinement maintained at MSP, subject Plaintiff, as a person with mental illness, to a substantial risk of serious mental, emotional and physical harm. Defendants have acted with

deliberate indifference to Plaintiff's need for appropriate mental health treatment and with conscious disregard for the substantial risk of serious harm to Plaintiff's health and safety.

65. Defendants' policies, practices, acts, customs, and omissions, and the conditions of confinement maintained at MSP have greatly exacerbated Plaintiff's mental illness.

66. Defendants' policies, practices, acts, customs, and omissions, and the conditions of confinement maintained at MSP constitute and evidence a deliberate indifference to Plaintiff's constitutional rights.

67. The foregoing actions and inactions, as applied to Plaintiff, a person with mental illness, violate Article II, Section 22 of the Montana Constitution's prohibition of cruel and unusual punishment.

68. Some of Defendants' policies, practices, acts, customs and omissions, in particular the deprivation of food and water during BMPs, violate Article II, Section 22 of the Montana Constitution's prohibition of cruel and unusual punishment, regardless of Plaintiff's status as a youth or a person with mental illness.

Second Claim for Relief
(Right to Human Dignity, Montana Constitution)

Plaintiff incorporates by reference all allegations in paragraphs 1 through 70 as though fully set forth herein.

69. Defendants' policies, practices, acts, customs, and omissions, and the conditions of confinement maintained at MSP, constitute an affront to Plaintiff's inviolable right of human dignity, in violation of Article II, Section 4 of the Montana Constitution.

Third Claim for Relief
(Right of Privacy, Montana Constitution)

Plaintiff incorporates by reference all allegations in paragraphs 1 through 64 as though fully set forth herein.

70. Defendants' policies, practices, acts, customs, and omissions, and the conditions of confinement maintained at MSP deprive Plaintiff of his right of privacy and bodily integrity, in violation of Article II, Section 10 of the Montana Constitution.

Fourth Claim for Relief
(Right to Reformation and Rehabilitation, Montana Constitution and Statute)

Plaintiff incorporates by reference all allegations in paragraphs 1 through 64 as though fully set forth herein.

71. Defendants' policies, practices, acts, customs, and omissions, and the conditions of confinement maintained at MSP deprive Plaintiff of his right to reformation and rehabilitation under Article II, Section 28 of the Montana Constitution.

72. Defendants' policies, practices, acts, customs, and omissions, and the conditions of confinement maintained at MSP deprive Plaintiff of his right to reformation and rehabilitation under Mont. Code Ann. §§ 46-18-101(2)(d), 53-1-201(2), and 53-30-101(1).

Fifth Claim for Relief
Right to Education, Montana Constitution

Plaintiff incorporates by reference all allegations in paragraphs 1 through 64 as though fully set forth herein.

73. Defendants' failure to provide appropriate educational opportunities to enable Plaintiff to obtain a high school diploma denies Plaintiff his constitutional right to equal

educational opportunity and to an educational opportunity to develop his full educational potential under Article X, Section 1 of the Montana Constitution.

Sixth Claim for Relief
(Cruel and Unusual Punishment, U.S. Constitution)

Plaintiff incorporates by reference all allegations in paragraphs 1 through 64 as though fully set forth herein.

74. Defendants, through the policies, practices, acts, customs and omissions, and the conditions of confinement maintained at MSP, subject Plaintiff, as a youth, to a substantial risk of serious mental, emotional and physical harm. Defendants have acted with deliberate indifference to Plaintiff's needs as a youth and with conscious disregard for the substantial risk of serious harm to Plaintiff's health and safety. The foregoing actions and inactions, as applied to Plaintiff, a youth, violate Plaintiff's right to be free from cruel and unusual punishment, as guaranteed by the Eighth Amendment of the United States Constitution, and made applicable to the states by the 14th Amendment of the United States Constitution.

75. Defendants, through the policies, practices, acts, customs and omissions, and the conditions of confinement maintained at MSP, subject Plaintiff, as a person with mental illness, to a substantial risk of serious mental, emotional and physical harm. Defendants have acted with deliberate indifference to Plaintiff's need for appropriate mental health treatment and with conscious disregard for the substantial risk of serious harm to Plaintiff's health and safety.

76. Defendants' policies, practices, acts, customs, and omissions, and the conditions of confinement maintained at MSP have greatly exacerbated Plaintiff's mental illness.

77. Defendants' policies, practices, acts, customs, and omissions, and the conditions of confinement maintained at MSP constitute and evidence a deliberate indifference to Plaintiff's constitutional rights.

78. The foregoing actions and inactions, as applied to Plaintiff, a person with mental illness, violate Plaintiff's right to be free from cruel and unusual punishment, as guaranteed by the Eighth Amendment of the United States Constitution, and made applicable to the states by the 14th Amendment of the United States Constitution.

79. Some of Defendants' policies, practices, acts, customs and omissions, in particular the deprivation of food and water during BMPs, violate Plaintiff's right to be free from cruel and unusual punishment, as guaranteed by the Eighth Amendment of the United States Constitution, and made applicable to the states by the 14th Amendment of the United States Constitution.

80. Defendants' violations of the U.S. Constitution are actionable pursuant to 42 U.S.C. § 1983.

Seventh Claim for Relief

(Customary International Law, Right to Be Free of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)

Plaintiff incorporates by reference all allegations in paragraphs 1 through 64 as though fully set forth herein.

81. In light of Plaintiff's youth, Plaintiff's childhood history of trauma, abuse and neglect, and Plaintiff's existing psychiatric conditions, all of which Defendants have knowledge, Defendants' foregoing actions and inactions violate customary international law as reflected in numerous human rights treaties and other instruments, including *inter alia*: Articles 3, 19, 23, 34, 37, and 39 of the Convention on the Rights of the Child; Articles 7 and 10 of the International Covenant on Civil and Political Rights; and Articles 2 and 16 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which prohibit all forms of torture and other forms of cruel, inhuman, or degrading treatment or punishment and recognize heightened measures of protection against such treatment for children.

82. Defendants' violations of customary international law are actionable pursuant to 42 U.S.C. § 1983 because customary international law has been held, since the adoption of the U.S. Constitution, to comprise part of the laws of the United States.

Eighth Claim for Relief
(Customary International Law: Right to effective rehabilitation)

Plaintiff incorporates by reference all allegations in paragraphs 1 through 64 as though fully set forth herein.

83. As an integral component of Plaintiff's sentence, he should be afforded effective rehabilitative services. Defendants' policies, practices, acts, customs and omissions undermine this right and as such violate customary international law as reflected in numerous human rights treaties and other instruments, including *inter alia*: Articles 3, 19, 23, 37, 39 and 40 of the Convention on the Rights of the Child; Article 10 (3) of the International Covenant on Civil and Political Rights; Rules 57, 60 and 65 of the U.N. Standard Minimum Rules for the Treatment of Prisoners; and Rule 26 of the U.N. Standard Minimum Rules for the Administration of Juvenile Justice which require that offenders, and in particular, juvenile offenders be afforded effective rehabilitative services while serving their sentences.

84. Defendants' violations of customary international law are actionable pursuant to 42 U.S.C. § 1983 because customary international law has been held, since the adoption of the U.S. Constitution, to comprise part of the laws of the United States.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court provide the following relief:

1. Assume jurisdiction of this action;

2. Declare that Defendants have violated Plaintiff's rights under Article II, Sections 10, 15, 22, and 24, and Article X, Section 1 of the Montana Constitution; and the 8th and 14th Amendment of the United States Constitution; and customary international law;

3. Preliminarily enjoin Defendants, their agents, employees and successors, and all other persons in active or concert with any of them, from engaging in the unlawful acts, practices, customs and omissions described herein, including but not limited to confining Plaintiff in the High Side, SHU or on a BMP and failing to provide adequate mental health treatment;

4. Permanently enjoin Defendants, their agents, employees and successors, and all other persons in active or concert with any of them, continuing the unlawful acts, conditions, practices, and omissions described herein, including but not limited to:

- i. enjoining the classification and placement of juveniles in SHU;
- ii. enjoining the placement of juveniles on BMPs;
- iii. enjoining the placement of juveniles with adult offenders;
- iv. enjoining the classification and placement of inmates with mental illness in SHU;
- v. enjoining the placement of inmates with mental illness on BMPs.

5. Order Defendants, their agents, employees, and successors, and all persons acting in concert with them, to take action necessary to implement an appropriate plan of remediation addressing all unlawful acts described herein, including but not limited to:

- i. providing appropriate mental health assessment, monitoring and treatment to Plaintiff and others with mental illness;

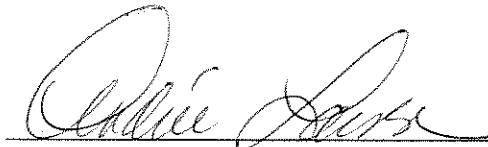
- ii. providing sufficient training to DOC staff in the assessment, monitoring and treatment of Plaintiff and other inmates with mental illness;
- iii. developing and implementing consequences for unacceptable behaviors in the context of mental health assessment, diagnosis and treatment;
- iv. developing and implementing policies and procedures for the protection of Plaintiff and other juveniles at MSP;
- v. developing and implementing appropriate vocational, educational and other programs for Plaintiff and other school-age inmates.

6. Award Plaintiff reasonable attorney's fees and costs pursuant to Mont. Code Ann. § 27-8-313, the private attorney general doctrine, and 42 U.S.C. § 1988; and

7. Grant such other relief as is just and proper under the circumstances.

Dated this 16th day of December 2009.

Respectfully submitted,



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