

FILED  
U.S. DISTRICT COURT  
DISTRICT COURT NEBRASKA  
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

COPY

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GARY D. McFARLAND  
CLERK

ELIZABETH M.; SELENA T.,  
by and through her legal guardian,  
CAROLYN TANKERSLEY;  
JENNIFER H.; JULIANA W.;  
PENNY G.; ETHEL H.; MARY W.;  
ROBIN H.; THERESA L.-R.; SARA M.;  
TAMICA S., by and through her legal  
guardian, SHAUNDA STARKS;  
KIMBERLY H., by and through her legal  
guardian, SANDRA TANI; PAM B.;  
CAROLINE C., by and through her legal  
guardian, THEDA CARTER; JOELENE B.;  
and SUSAN Z., on behalf of themselves  
and on behalf of others similarly situated,

Plaintiffs,

vs.

RON D. ROSS, in his official capacity as the  
Director of Nebraska Health and Human  
Services System; BARBARA RAMSEY, in her  
official capacity as the Chief Executive Officer  
at the Lincoln Regional Center; RICHARD  
GAMEL, in his official capacity as the Chief  
Executive Officer at the Norfolk Regional  
Center; WILLIAM GIBSON, in his official  
capacity as the Chief Executive Officer at the  
Hastings Regional Center; Y. SCOTT MOORE,  
M.D., in his official capacity as the Clinical  
Director at the Lincoln Regional Center;  
STEPHEN O'NEILL, M.D., in his official  
capacity as the Clinical Director at the Norfolk  
Regional Center; and RICHARD DYER, M.D.,  
in his official capacity as the acting Clinical  
Director at the Hastings Regional Center,

Defendants.

Case No. 8.02CUS85

CLASS ACTION  
COMPLAINT

## PRELIMINARY STATEMENT

This is a civil rights action by women, all who are or were residents at the State of Nebraska's custodial mental health facilities commonly known as the Lincoln Regional Center (hereinafter "LRC") and Norfolk Regional Center (hereinafter "NRC") who have a mental illness and some who have a co-occurring developmental disability, physical disability, or a chemical dependency, requesting declaratory and injunctive relief from a pattern and practice, known and tolerated by the Defendants and their employees, of repeated rape, sexual assault, sexual exploitation, and sexual harassment by male staff members and male residents upon these women.

Many of the women residents who have been raped, sexually assaulted, exploited, and harassed at the State controlled facilities were known by the Defendants to be highly vulnerable to sexual predators because of their past history of childhood sexual abuse and sexual trauma. The Defendants, by and through their agents and employees, denied these highly vulnerable women a safe environment at LRC and NRC. Moreover, the Defendants also failed to physically protect the Plaintiffs from sexual assaults and failed to provide them with mental health programs and services designed to treat and ameliorate the consequences of their history of physical, emotional, and sexual trauma.

Furthermore, the Defendants failed to substantially meet their obligations to provide both a safe therapeutic environment and to provide trauma treatment for women in the State of Nebraska at the Regional Centers and in the community pursuant to the provisions of the Consent Decree entered Dec. 23, 1998, in the case entitled *Caroline C., et al., v. Dale Johnson, et al.*, Case No. 4:CV95-22, (Filing 133), designed to settle a similar pattern and practice tolerated

by the Defendants, and/or their predecessors, of rape, sexual assaults, and abuse upon vulnerable women by known predatory male residents at the Hastings Regional Center (hereinafter "HRC").

Plaintiffs, on their behalf and on behalf of a class of women who are similarly situated, allege that the Defendants deprived them of their constitutionally protected rights under the First, Fourth, Fifth, Ninth, and Fourteenth Amendments of the United States Constitution and the laws of the United States and the State of Nebraska, to wit: to be free in their persons from sexual and physical abuse; to have their personal bodily integrity not violated; to be afforded specially designed treatment programs and services to meet their unique needs with reasonable accommodations for their various disabilities; to receive activities, services, support, and assistance, including discharge planning and a comprehensive system of community mental health residential facilities designed to treat, rehabilitate, and ameliorate their mental illness and disability; and to be afforded the due process and equal protection of the laws as individuals with mental illnesses and other developmental disabilities.

### **JURISDICTION**

1. The jurisdiction of this Court is based upon 28 U.S.C. § 1343 (3) and (4); 28 U.S.C. § 1331; 28 U.S.C. § 2201 and § 2202; and the continuing jurisdiction of this Court pursuant to the Consent Decree entered Dec. 23, 1998, in the case entitled *Caroline C., et al., v. Dale Johnson, et al.*, Case No. 4:CV95-22. (Filings 133, 179, and 180).

2. The claims for relief arise under the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the United States Constitution; the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*, as amended, and its implementing regulations (hereinafter "ADA"); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.*, as amended, (hereinafter

"§ 504"); 42 U.S.C. § 1983; 42 U.S.C. § 1988; the Consent Decree entered Dec. 23, 1998, in the case entitled *Caroline C., et al., v. Dale Johnson, et al.*, Case No. 4:CV95-22 (Filing 133).

3. Venue is properly laid in this court pursuant to 28 U.S.C. § 1391(b)(2).

### PLAINTIFFS

4. Plaintiff Elizabeth M. is a 23 year-old woman, who is diagnosed with the mental illnesses of Schizoaffective Disorder and Personality Disorder Not Otherwise Specified. At all material times, she was a resident at Short Term Care (Building 10) at LRC and in the custody of the Defendants.

5. Plaintiff Selena T. is a 27 year-old woman, who is diagnosed with the mental illnesses of Schizoaffective Disorder, Mood Disorder-Not Otherwise Specified, Post-Traumatic Stress Disorder, Dementia-Not Otherwise Specified (Amnestic), and who has a Traumatic Brain Injury. At all material times, she was a patient at Short Term Care (Building 10) at LRC and in the custody of the Defendants. Carolyn Tankersley is her legal guardian.

6. Plaintiff Jennifer H. is a 19 year-old woman, who is diagnosed with the mental illnesses of Obsessive-Compulsive Disorder and Borderline Personality Disorder. At all material times, she was a resident at Short Term Care (Building 10) at LRC and in the custody of the Defendants.

7. Plaintiff Juliana W. is a 38 year-old woman, who is diagnosed with the mental illnesses of Schizophrenia, Post Traumatic Stress Disorder, and who also has a diagnosed physical disability of Multiple Sclerosis which requires her to use leg braces. At all material times, she was a resident at the Short Term Care (Building 10) at LRC and in the custody of the Defendants.

8. Plaintiff Penny G. is a 33 year-old woman, who is diagnosed with the mental illness of Schizophrenia and who has a developmental disability of mild mental retardation. At all material times, she was a resident at Short Term Care (Building 10) at LRC and in the custody of the Defendants.

9. Plaintiff Ethel H. is a 32 year-old woman, who is diagnosed with the mental illness of Bipolar Disorder. At all material times, she was a resident at Short Term Care (Building 10) at LRC and in the custody of the Defendants.

10. Plaintiff Mary W. is a 49 year-old woman, who is diagnosed with the mental illness of Paranoid Schizophrenia. At all material times, she was a resident at Short Term Care (Building 10) at LRC and in the custody of the Defendants.

11. Plaintiff Robin H. is a 28 year-old woman, who is diagnosed with the mental illnesses of Schizoaffective Disorder and Borderline Personality Disorder. At all material times, she was a resident at Short Term Care (Building 10) at LRC and in the custody of the Defendants.

12. Plaintiff Theresa L-R. is a 34 year-old woman, who is diagnosed with the mental illnesses of Depression, Post Traumatic Stress Disorder, and Borderline Personality Disorder. At all material times, she was a resident at Short Term Care (Building 10) at LRC and in the custody of the Defendants.

13. Plaintiff Sara M. is a 28 year-old woman, who is diagnosed with the mental illnesses of Post Traumatic Stress Disorder, Personality Disorder, and who also has a history of chemical dependency. At all material times, she was a resident of Ward 3 East at NRC and in the custody of the Defendants.

14. Plaintiff Tamica S. is a 22 year-old woman who is diagnosed with the mental illness of

Paranoid Schizophrenia. At all material times, she was a resident of Ward 3 West at NRC and in the custody of the Defendants. Shaunda Starks is her legal guardian.

15. Plaintiff Kimberly H. is a 35 year-old woman, who is diagnosed with the mental illness of Borderline Personality and who also has a diagnosis of traumatic brain injury and a history of chemical dependency. At all material times, she was a resident of Ward 3 East at NRC and in the custody of the Defendants. Sandra Tani is her legal guardian.

16. Plaintiff Pam B. is a 32 year-old woman, who is diagnosed with the mental illness of Bipolar and who has a history of chemical dependency. At all material times, she was a resident of Ward 3 East at NRC and in the custody of the Defendants.

17. Plaintiff Caroline C. is a 28 year-old woman, who is diagnosed with the mental illnesses of Depressive Disorder, Borderline Personality Disorder, and Post-Traumatic Stress Disorder. At all material times, she was a patient on Ward 36 at HRC and at LRC and in the custody of the Defendants. Theda Carter is her legal guardian.

18. Plaintiff Joeline B. is a 32 year-old woman, who is diagnosed with the mental illnesses of Bipolar Disorder and Post Traumatic Stress Disorder. At all material times, she was a patient at HRC and in the custody of the Defendants.

19. Plaintiff Susan Z. is a 29 year-old woman, who is diagnosed with the mental illnesses of Borderline Personality Disorder, Anorexia, and also who has a developmental disability of Autism and Aphasia. At all material times, she was a resident at HRC and in the custody of the Defendants.

## DEFENDANTS

20. Defendant Ron D. Ross (hereinafter "Ross") is sued in his official capacity. Further, Defendant Ross in his official capacity, is a person who is bound as the Director of the Nebraska Department of Health and Human Services (HHS), to the duties and responsibilities stated in Neb. Rev. Stat. §§ 81-3007, 81-3007.01, 81-3101 et seq., and 83-101.06, et seq., (Reissue 1999).

21. Defendant Ross is and was the Director of the HHS for the State of Nebraska and exercised overall responsibility and supervision of formulating the policies, practices, and procedures of HHS and more specifically, the promulgation, administration, supervision, and control of the rules and regulations as to ensure safety, health, and welfare of the residents at the three regional centers of LRC, NRC, and HRC, including the treatment and amelioration of the Plaintiffs' mental illnesses. Defendant Ross directly supervises Defendants Ramsey, Gamel, and Gibson in the operation of the three regional centers.

22. Defendant Ross, in his official capacity, and as successor in interest to Dale Johnson, is the primary Defendant responsible for the implementation of the terms and compliance with the requirements of the Consent Decree entered Dec. 23, 1998, in the case entitled *Caroline C., et al., v. Dale Johnson, et al.*, Case No. 4:CV95-22. (Filing 133).

23. Defendant Ross, in his official capacity, and at all times relevant herein, pursuant to Neb. Rev. Stat. § 83-3101 (Reissue 1999), as Director of HHS, was and is charged with, pursuant to Neb. Rev. Stat. §§ 81-3007, 83-109, and 83-2102 (Reissue 1999), the responsibility for the general control over the admission and treatment of residents in all institutions over which HHS has jurisdiction in the State of Nebraska. Defendant Ross was and is also charged with exercising the general responsibility of the supervision of state institutions which are under the

supervision of HHS, pursuant to Neb. Rev. Stat. § 83-107.01 (Reissue 1999), and pursuant to Neb. Rev. Stat. § 83-108 (Reissue 1999), the oversight of and general control of state developmental centers, hospitals, and such skilled nursing care and intermediate care facilities as may be established by the department and all charitable institutions, including those programs and services offered at LRC, NRC, and HRC.

24. Defendant Barbara Ramsey (hereinafter "Ramsey") is sued in her official capacity. She is a person who is bound as the Chief Executive Officer of the Lincoln Regional Center to the duties and responsibilities stated in Neb. Rev. Stat. § 83-126 and exercised overall responsibility and supervision of the day-to-day operations of LRC.

25. Defendant Richard Gamel (hereinafter "Gamel") is sued in his official capacity. He is a person who is bound as the Chief Executive Officer of the Norfolk Regional Center to the duties and responsibilities stated in Neb. Rev. Stat. § 83-126 and exercised overall responsibility and supervision of the day-to-day operations of the NRC.

26. Defendant William Gibson (hereinafter "Gibson") is sued in his official capacity. He is a person who is bound as the Chief Executive Officer of the Hastings Regional Center to the duties and responsibilities stated in Neb. Rev. Stat. § 83-126 and exercised overall responsibility and supervision of the day-to-day operations of the HRC.

27. Defendant Y. Scott Moore, M.D. (hereinafter "Moore") is and was the Clinical Director at LRC. At all material times, Defendant Moore exercised responsibility for the supervision, coordination, and control of the clinical programs, medical services, mental health services, and developmental disability programs of LRC.

28. Defendant Stephen O'Neill, M.D. (hereinafter "O'Neill") is and was the Clinical



Director at NRC. At all material times, Defendant O'Neill exercised responsibility for the supervision, coordination, and control of the clinical programs, medical services, mental health services, and developmental disability programs of NRC.

29. On March 21, 2002, Defendant Richard Dyer, M.D. was appointed "Acting Clinical Director". He is the Clinical Director at HRC. At all material times, Defendant Dyer exercised responsibility for the supervision, coordination, and control of the clinical programs, medical services, mental health services, and developmental disability programs of HRC.

### CLASS ACTION ALLEGATIONS

30. Plaintiffs bring this action on behalf of themselves and all other woman similarly situated, pursuant to Fed. R. Civ. P. 23. The Plaintiff class consists of all women who are currently residents at LRC, NRC, or HRC; and all women who resided at the said facilities during all material times of the alleged violations of constitutional and statutory rights, and those constitutional rights secured by the Consent Decree entered Dec. 23, 1998, in the case entitled *Caroline C., et al., v. Dale Johnson, et al.*, Case No. 4:CV95-22; and all women in the future who will reside at LRC, NRC, or HRC.

31. That the class is so numerous that joinder of all members is impractical; that there are questions of law and fact common to all members of the class; that the claims of the named Plaintiffs' claims are typical of all class members' claims; that the named Plaintiffs will fairly and adequately represent the interests of the class.

32. Common factual questions apply to the resolution of this dispute as to all class members. They include, but are not limited to:

- (a) Plaintiffs' status of having a "disability" within the meaning of the ADA, 42

U.S.C. § 12101 *et seq.*, as amended, and Plaintiffs' status of having "handicaps" within the meaning of Section 504, 29 U.S.C. § 794, as amended.

- (b) The Defendants' failure to provide services to meet the Plaintiffs' mental health and safety needs, with accommodations for their developmental and habilitative needs as secured by 42 U.S.C. § 12101 *et seq.*, as amended, and its implementing regulations, and 29 U.S.C. § *et seq.*, as amended.
- (c) The Defendants' failure to protect the Plaintiffs against rape, sexual abuse, sexual exploitation, sexual assault, sexual harassment, physical harm, and/or emotional harm while in the Defendants' care and custody.
- (d) The Defendants' failure to either provide or adequately monitor mental health trauma treatment for Plaintiffs after their discharge from HRC into community programs; upon re-entry into Defendants' operated facilities at LRC and NRC; and after re-traumatization of Plaintiffs by the rapes and sexual assaults which occurred while they remained in the custody of the Defendants at Defendants' facilities.

33. Common legal questions apply to the resolution of this dispute as to all class members. They include but are not limited to:

- (a) Whether the Defendants' patterns and practices violated the duties imposed upon them by the "special relationship" with the Plaintiffs, and whether these acts or omissions constitute a breach of the duty to protect the Plaintiffs from emotional, mental, psychological, sexual, and physical harm;
- (b) Whether the Defendants' patterns and practices violated the duties imposed upon

them by the "special relationship" with the Plaintiffs and whether these practices violated the rights ensured to the Plaintiffs by the United States and Nebraska Constitutions; and United States and Nebraska statutory provisions;

- (c) Whether the Defendants violated their duties to protect the bodily integrity, privacy, and self-autonomy of the Plaintiffs in the Plaintiffs' pursuit of their freedom of expression and right to treatment, rehabilitation, habilitation, and amelioration of their mental illnesses;
- (d) Whether the Defendants violated their duties to protect and secure to the Plaintiffs, their constitutional and statutory rights under the United States Constitution as contained in the provisions of the Consent Decree entered Dec. 23, 1998 in the case entitled *Caroline C., et al., v. Dale Johnson, et al.*, Case No. 4:CV95-22.

34. Any adjudication by this Court, with respect to the actions and/or omissions of the Defendants, will be dispositive of the interests of the class as a whole.

35. The class, as a whole is entitled to declaratory judgment of the minimum standards and policies required under the material constitutional and statutory sections.

### FACTUAL ALLEGATIONS

36. Plaintiffs, to avoid repetition, reallege, and incorporate herein by reference, as if set forth at length, paragraphs 1 through 35.

37. That at all times relevant hereto, all of the Defendants were acting under color of pretense, custom, and practice of state law and their authority.

PLAINTIFF ELIZABETH M.

38. That on or about late July and early August, 2001, the Plaintiff Elizabeth M. was sexually assaulted several times by DM, a staff member at LRC, to wit: DM touched the breasts and buttocks of the Plaintiff Elizabeth M. DM exposed his penis to the Plaintiff Elizabeth M. and placed the Plaintiff Elizabeth M.'s hand on his exposed penis. Furthermore, DM repeatedly lifted up Plaintiff Elizabeth M's shorts to view her pubic area. He kept promising her additional privileges. On or about the same time, Plaintiff Elizabeth M. was raped by a male resident, identity unknown, to wit: The male resident grabbed Plaintiff Elizabeth M., took her into her room, made her bend over, and forcibly penetrated her vaginal area from behind.

39. That at the time of these sexual assaults, DM had previously sexually assaulted or was sexually assaulting the following women residents: Jennifer H., Penny G., Ethel H., Mary W., Selena T., Robin H., Theresa L-R., and Juliana W.

40. That Plaintiff Elizabeth M. has a history of sexual victimization from multiple perpetrators. She also has a history of emotional and physical abuse.

41. That on or about the 13<sup>th</sup> day of September, 2001, Plaintiff Elizabeth M. reported to LRC staff the sexual assaults by DM. Upon receipt of this information, the Defendants and their employees or agents concluded that the assaultive behavior of DM was merely the Plaintiff Elizabeth M. being "delusional." Defendants allowed DM to continue to work on the Short Term Care at LRC.

42. That the above-described sexual assaults were in violation of Plaintiff Elizabeth M's constitutional rights, including but not limited to, rights secured by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the Constitution of the United States and Sections 1, 3, 5, and 7

of Article I of the Constitution of the State of Nebraska.

43. That the Defendants were aware of the actions of DM and were aware that such conduct was occurring at LRC and took no corrective action to stop the abusive conduct.

44. That the Defendants' failure to protect Plaintiff Elizabeth M. consisted of a pattern or series of incidents of unconstitutional conduct which was condoned by the Defendants and became the represented policy and/or custom or practice of HHS and LRC during the relevant time that Plaintiff Elizabeth M. was a resident.

45. That as a direct result of the Defendants' actions and omissions through their agents and employees, Plaintiff Elizabeth M. was sexually assaulted. As a result of the sexual assaults, Plaintiff Elizabeth M's injuries included the following: severe and permanent personal and emotional injuries, severe physical injuries, mental pain and suffering, permanent emotional trauma, and psychological injury. As a result of the injuries that she has suffered due to the sexual assaults, she has required and will continue to require, counseling and mental health trauma treatment in an effort to help her recover from and attempt to cope with the emotional trauma and her re-traumatization she experienced while in the custody of the Defendants.

**PLAINTIFF SELENA T.**

46. That commencing on or about early July, 2001 and continuing into August, 2001, the Plaintiff Selena T. was repeatedly sexually assaulted by DM, a staff member at LRC, to wit: DM took her into the storage closet to get a pillow. DM shut the door and grabbed the breasts of the Plaintiff Selena T. Then DM grabbed her hair, bent her over, and digitally penetrated the vaginal area of the Plaintiff Selena T. DM forcibly and violently raped Plaintiff Selena T. by subjecting the Plaintiff Selena T. to vaginal penetration with his penis from behind. When he finished

raping her, he threatened to kill her if she told. That at the time of said assaults DM had previously sexually assaulted or was assaulting the following women residents: Mary W., Ethel H., Penny G., Robin H., Theresa L-R., and Juliana W.

47. That Plaintiff Selena T. has a history of sexual victimization from multiple perpetrators and is a victim of incest. She also has a history of emotional and physical abuse.

48. That Plaintiff Selena T. reported to LRC staff the sexual assaults by DM. Upon receipt of this information, the Defendants and their employees or agents disbelieved her, indicated she was delusional, and failed to take any action against DM.

49. That the above-described sexual assault was in violation of Plaintiff Selena T.'s constitutional rights, including but not limited to, rights secured by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the Constitution of the United States and Sections 1, 3, 5, and 7 of Article I of the Constitution of the State of Nebraska.

50. That the Defendants were aware of the actions of DM and were aware that such conduct was occurring at LRC and took no corrective action to stop the abusive conduct.

51. That the Defendants' failure to protect Plaintiff Selena T. consisted of a pattern or series of incidents of unconstitutional conduct which was condoned by the Defendants and became the represented policy and/or custom or practice of HHS and LRC during the relevant time that Plaintiff Selena T. was a resident.

52. That as a direct result of the Defendants' actions and omissions through their agents and employees, Plaintiff Selena T. was sexually assaulted. As a result of the sexual assaults, Plaintiff Selena T.'s injuries included the following: severe and permanent personal and emotional injuries, severe physical injuries, mental pain and suffering, permanent emotional

trauma, and psychological injury. As a result of the injuries that she has suffered due to the sexual assaults, she has required, and will continue to require, counseling and mental health trauma treatment in an effort to help her recover from and attempt to cope with the emotional trauma and the re-traumatization she experienced while in the custody of the Defendants.

**PLAINTIFF JENNIFER H.**

53. That commencing on or about the 16<sup>th</sup> of August, 2001 and continuing into September, 2001, the Plaintiff Jennifer H. was sexually assaulted by DM, a staff member at LRC, to wit: DM touched the buttocks of the Plaintiff Jennifer H. DM continually exposed her body in the mornings when he woke her up on the ward. Additionally, DM constantly tried to get Plaintiff Jennifer H. into the laundry room alone, trying to hug her and fondle her buttocks. At the time of these sexual assaults, DM had previously sexually assaulted or was sexually assaulting the following women residents: Penny G., Ethel H., Mary W., Selena T., Robin H., Theresa L., Elizabeth M., and Juliana W.

54. That on or about the 10<sup>th</sup> day of September, 2001, Plaintiff Jennifer H. reported to LRC staff the sexual assaults by DM. Upon receipt of this information, the Defendants and their employees or agents merely directed Plaintiff Jennifer H. that she should try to stay away from DM. The Defendants failed to remove DM from the Short Term Care at LRC and the women residing there.

55. That the above-described sexual assaults were in violation of Plaintiff Jennifer H.'s constitutional rights, including but not limited to, rights secured by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the Constitution of the United States and Sections 1, 3, 5, and 7 of Article I of the Constitution of the State of Nebraska.

56. That the Defendants were aware of the actions of DM and were aware that such conduct was occurring at LRC and took no corrective action to stop the abusive conduct.

57. That the Defendants' failure to protect Plaintiff Jennifer H. consisted of a pattern or series of incidents of unconstitutional conduct which was condoned by the Defendants and became the represented policy and/or custom or practice of HHS and LRC during the relevant time that Plaintiff Jennifer H. was a resident.

58. That as a direct result of the Defendants' actions and omissions through their agents and employees, Plaintiff Jennifer H. was sexually assaulted. As a result of the sexual assaults, Plaintiff Jennifer H's injuries included the following: severe and permanent personal and emotional injuries, physical injuries, mental pain and suffering, permanent emotional trauma, and psychological injury. As a result of the injuries that she has suffered due to the sexual assaults, she has required, and will continue to require, counseling and mental health trauma treatment in an effort to help her recover from and attempt to cope with the emotional trauma.

**PLAINTIFF JULIANA W.**

59. That commencing on or about late June, 2001 or early July, 2001 and continuing into late August 2001, the Plaintiff Juliana W. was repeatedly sexually assaulted by DM, a staff member at LRC, to wit: DM, angry at having to remove her leg braces, would digitally penetrate her vagina. Furthermore, he would stand over her bed and force his penis into her mouth. He continually grabbed and roughly fondled her breasts. When Plaintiff Juliana W. told him to stop and that he was hurting her, he merely told her that, "she was a big girl and knew what was going on." At the time of these assaults, DM had previously sexually assaulted or was sexually assaulting the following women residents: Mary W., Ethel H., Penny G., Robin H., Selena T.,



Elizabeth M., and Theresa L-R.

60. That Plaintiff Juliana W. has a history of sexual abuse and victimization from multiple perpetrators and a history of emotional and physical abuse.

61. That after Plaintiff Juliana W. complained to a staff member of LRC about DM, he was finally removed from her 1 on 1 staff supervision. However, he was allowed to continue to work at Short Term Care at LRC with access to the room of Plaintiff Juliana W. LRC staff merely told Plaintiff Juliana W. to scream out if he did anything else to her.

62. That the above-described sexual assault was in violation of Plaintiff Juliana W.'s constitutional rights, including but not limited to, rights secured by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the Constitution of the United States and Sections 1, 3, 5, and 7 of Article I of the Constitution of the State of Nebraska.

63. That the Defendants were aware of the actions of DM and were aware that such conduct was occurring at LRC and took no corrective action to stop the abusive conduct.

64. That the Defendants' failure to protect Plaintiff Juliana W. consisted of a pattern or series of incidents of unconstitutional conduct which was condoned by the Defendants and became the represented policy and/or custom or practice of HHS and LRC during the relevant time that Plaintiff Juliana W. was a resident.

65. That as a direct result of the Defendants' actions and omissions through their agents and employees, Plaintiff Juliana W. was sexually assaulted. As a result of the sexual assaults, Plaintiff Juliana W.'s injuries included the following: severe and permanent personal and emotional injuries, severe physical injuries, mental pain and suffering, permanent emotional trauma, and psychological injury. As a result of the injuries that she has suffered due to staff

member DM's sexual assaults, she has required, and will continue to require, counseling, and mental health trauma treatment in an effort to help her recover from and attempt to cope with the emotional trauma and re-traumatization which occurred while she was in the custody of the Defendants.

**PLAINTIFF PENNY G.**

66. That on or about the 6<sup>th</sup> day of August, 2001, the Plaintiff Penny G. while taking a bath was sexually assaulted by DM, a staff member at LRC, to wit: DM grabbed her breasts and fondled her vagina and pubic area. DM exposed his penis to the Plaintiff Penny G. DM would not leave the bathroom and stood there looking at her as she dried herself. At the time of the sexual assault, DM had previously sexually assaulted or was sexually assaulting the following women residents: Ethel H., Mary W., Selena T., Robin H., and Theresa L-R.

67. That on or about the 6<sup>th</sup> day of August, 2001, Plaintiff Penny G. reported to LRC staff the sexual assault by DM. Upon receipt of this information, the Defendants and their employees or agents concluded that the sexually assaultive behavior of DM was merely "part of her mental illness" of the Plaintiff Penny G. and not a sexual assault upon this Plaintiff.

68. That the above-described sexual assault was in violation of Plaintiff Penny G.'s constitutional rights, including but not limited to, rights secured by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the Constitution of the United States and Sections 1, 3, 5, and 7 of Article I of the Constitution of the State of Nebraska.

69. That the Defendants were aware of the actions of DM and were aware that such conduct was occurring at LRC and took no corrective action to stop the abusive conduct.

70. That the Defendants' failure to protect Plaintiff Penny G. consisted of a pattern or

series of incidents of unconstitutional conduct which was condoned by the Defendants and became the represented policy and/or custom or practice of HHS and LRC during the relevant time that Plaintiff Penny G. was a resident.

71. That as a direct result of the Defendants' actions and omissions through their agents and employees, Plaintiff Penny G. was sexually assaulted. As a result of the sexual assaults, Plaintiff Penny G.'s injuries included the following: severe and permanent personal and emotional injuries, severe physical injuries, mental pain and suffering, permanent emotional trauma, and psychological injury. As a result of the injuries that she has suffered due to the sexual assault, she has required and will continue to require, counseling and mental health trauma treatment in an effort to help her recover from and attempt to cope with the emotional trauma and re-traumatization which occurred while she was in the custody of the Defendants.

**PLAINTIFF ETHEL H.**

72. That on or about the 4<sup>th</sup> day of August, 2001, the Plaintiff Ethel H., while in the shower room to clean a shirt, was raped by DM, a staff member at LRC, to wit: DM forcibly grabbed her shoulders, bent her over, and violently penetrated her vaginally from behind. DM threatened to kill her if she told anyone. On a subsequent date during the summer of 2001, DM exposed his penis to the Plaintiff Ethel H. About a week later, DM tried to sexually assault her again but she was able to fight him off. At the time of those sexual assaults, DM had previously sexually assaulted or was sexually assaulting the following women residents: Mary W., Selena T., Robin H., Theresa R., Juliana W., and Penny G.

73. That Plaintiff Ethel H. has a history of sexual victimization from multiple perpetrators and a history of emotional and physical abuse.

74. That on or about the 11<sup>th</sup> day of August, 2001, Plaintiff Ethel H. reported to LRC staff the sexual assault by DM. Upon receipt of this information, the Defendants and their employees or agents, asserted that the Plaintiff Ethel H. was not telling the truth regarding the sexually assaultive behavior of DM.

75. That the above-described sexual assault was in violation of Plaintiff Ethel H.'s constitutional rights, including, but not limited to, rights secured by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the Constitution of the United States and Sections 1, 3, 5, and 7 of Article I of the Constitution of the State of Nebraska.

76. That the Defendants were aware of the actions of DM and were aware that such conduct was occurring at LRC and took no corrective action to stop the abusive conduct.

77. That the Defendants' failure to protect Plaintiff Ethel H. consisted of a pattern or series of incidents of unconstitutional conduct which was condoned by the Defendants and became the represented policy and/or custom or practice of HHS and LRC during the relevant time that Plaintiff Ethel H. was a resident.

78. That as a direct result of the Defendants' actions and omissions through their agents and employees, Plaintiff Ethel H. was sexually assaulted. As a result of the sexual assaults, Plaintiff Ethel H.'s injuries included the following: severe and permanent personal and emotional injuries, severe physical injuries, mental pain and suffering, permanent emotional trauma, and psychological injury. As a result of the injuries that she has suffered due to the sexual assaults, she has required and will continue to require, counseling and mental health trauma treatment in an effort to help her recover from and attempt to cope with the emotional trauma and re-traumatization which occurred while she was in the custody of the Defendants.

PLAINTIFF MARY W.

79. That commencing in late June and early July of 2001 and continuing into August, 2001, the Plaintiff Mary W. was sexually assaulted by DM, a staff member at LRC, to wit: DM began fondling the breasts of the Plaintiff Mary W. while she was in the linen closet on Sunday mornings to get clean linens. On July 4, 2001, DM grabbed the Plaintiff Mary W. on her way to the shower room, shoved her into her room, shut the door, bent her over, and violently raped her vaginally from behind. Before DM ejaculated, he removed his penis from her vagina and forced her to perform oral sex on him. Following the sexual assault on Plaintiff Mary W., DM threatened her and her daughter if she told anyone. DM had previously sexually assaulted or was sexually assaulting the following women residents: Ethel H., Penny G., Selena T., Robin H., Theresa L-R., Elizabeth M., and Juliana W.

80. That Plaintiff Mary W. has a history of sexual victimization and a history of emotional and physical abuse.

81. That the above-described sexual assault was in violation of Plaintiff Mary W.'s constitutional rights, including but not limited to, rights secured by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the Constitution of the United States and Sections 1, 3, 5, and 7 of Article I of the Constitution of the State of Nebraska.

82. That the Defendants were aware of the actions of DM and were aware that such conduct was occurring at LRC and took no corrective action to stop the abusive conduct.

83. That the Defendants' failure to protect the Plaintiff Mary W. consisted of a pattern or series of incidents of unconstitutional conduct which was condoned by the Defendants and became the represented policy and/or custom or practice of HHS and LRC during the relevant

time that Plaintiff Mary W. was a resident.

84. That as a direct result of the Defendants' actions and omissions through their agents and employees, Plaintiff Mary W. was sexually assaulted. As a result of the sexual assaults, Plaintiff Mary W.'s injuries included the following: severe and permanent personal and emotional injuries, severe physical injuries, mental pain and suffering, permanent emotional trauma, and psychological injury. As a result of the injuries that she has suffered due to the sexual assault, she has required, and will continue to require, counseling and mental health trauma treatment in an effort to help her recover from and attempt to cope with the emotional trauma and re-traumatization which occurred while she was a resident at LRC and in the custody of the Defendants.

#### **PLAINTIFF ROBIN H.**

85. That on or about June and July, 2001, the Plaintiff Robin H. was sexually assaulted in the elevator by DM, a staff member at LRC, to wit: DM lifted up her skirt and blouse and fondled her breasts and buttocks. She immediately informed a staff member who told her not to let it bother her. On July 4, 2001, DM grabbed Plaintiff Robin H. again as he was escorting her down the elevator for a smoke break and lifted up her skirt and fondled her vaginal area. Plaintiff Robin H. pushed DM away and yelled for help. LRC staff members came and placed her in full restraints and assigned DM to supervise her 1 to 1. During Robin H's 1 to 1 after that sexual assault, DM pulled down her underpants to assist her to urinate while she was in full restraints. He just kept smiling while he watched her urinate. At the time of the sexual assaults, DM had previously sexually assaulted or was sexually assaulting the following women residents: Theresa L-R., Ethel H., Selena T., Elizabeth M., Juliana W., and Mary W.

86. That Plaintiff Robin H. has a history of sexual victimization and a history of emotional and physical abuse. When Robin H. was re-admitted to the Defendants' facilities, they transferred her from LRC to HRC, subsequent to the Defendants finally terminating DM from employment at LRC. Only after additional women residents and women staff members continued to complain to the Defendants and their agents about DM's sexual predatory behavior and actions of DM during the summer and early fall of 2001, did the Defendants finally terminate DM.

87. That the above-described sexual assaults were in violation of Plaintiff Robin H.'s constitutional rights, including but not limited to, rights secured by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the Constitution of the United States and Sections 1, 3, 5, and 7 of Article I of the Constitution of the State of Nebraska.

88. That the Defendants were aware of the actions of DM and were aware that such conduct was occurring at LRC and took no corrective action to stop the abusive conduct.

89. That the Defendants' failure to protect Plaintiff Robin H. consisted of a pattern or series of incidents of unconstitutional conduct which was condoned by the Defendants and became the represented policy and/or custom or practice of HHS and LRC during the relevant time that Plaintiff Robin H. was a resident.

90. That as a direct result of the Defendants' actions and omissions, through their agents and employees, Plaintiff Robin H. was sexually assaulted. As a result of the sexual assaults, Plaintiff Robin H.'s injuries included the following: severe and permanent personal and emotional injuries, severe physical injuries, mental pain and suffering, permanent emotional trauma, and psychological injury. As a result of the injuries that she has suffered due to the

sexual assaults, she has required, and will continue to require, counseling and mental health trauma treatment in an effort to help her recover from and attempt to cope with the emotional trauma and re-traumatization which occurred while she was in the custody of the Defendants.

**PLAINTIFF THERESA L-R.**

91. That commencing on or about the middle of June, 2001 and continuing into July of 2001, the Plaintiff Theresa L-R. was repeatedly sexually assaulted by DM, a staff member at LRC, to wit: DM led her into the storeroom under the guise of getting supplies and forced her to perform oral sex on him. On a subsequent occasion, DM pulled her into the storeroom and after shutting the door, bent her over a chair and forcibly raped her as he penetrated her vaginally from behind. He continued to enter the room of Plaintiff Theresa L-R. and fondled her breasts and digitally penetrated her vagina with his fingers. DM promised her that he would make her stay at LRC easier with extra privileges. He continued to sexually assault Plaintiff L-R. until her room was moved from the back of the hall to the front of the hall. At the time of the sexual assaults, DM had previously sexually assaulted or was sexually assaulting the following women residents: Selena T., Elizabeth M., Juliana W., and Robin H.

92. That Plaintiff Theresa L-R. has a history of sexual victimization as a child and a history of emotional and physical abuse.

93. That the above-described sexual assault was in violation of Plaintiff Theresa L-R.'s constitutional rights, including but not limited to, rights secured by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the Constitution of the United States and Sections 1, 3, 5, and 7 of Article I of the Constitution of the State of Nebraska.

94. That the Defendants were aware of the actions of DM and were aware that such



conduct was occurring at LRC and took no corrective action to stop the abusive conduct.

95. That the Defendants' failure to protect Plaintiff Theresa L-R. consisted of a pattern or series of incidents of unconstitutional conduct which was condoned by the Defendants and became the represented policy and/or custom or practice of HHS and LRC during the relevant time that Plaintiff Theresa R. was a resident.

96. That as a direct result of the Defendants' actions and omissions through their agents and employees, Plaintiff Theresa L- R. was sexually assaulted. As a result of the sexual assaults, Plaintiff Theresa L-R.'s injuries included the following: severe and permanent personal and emotional injuries, severe physical injuries, mental pain and suffering, permanent emotional trauma, and psychological injury. As a result of the injuries that she has suffered due to the sexual assault, she has required, and will continue to require, counseling and mental health trauma treatment in an effort to help her recover from and attempt to cope with the emotional trauma and the re-traumatization which occurred at LRC while she was in the custody of the Defendants.

**PLAINTIFF SARA M.**

97. That on or about late summer or early fall of 2000, Plaintiff Sara M. was sexually assaulted after the evening meal near the kitchen on Ward 3 East at NRC by staff member JB who penetrated her vagina with his fingers. Plaintiff Sara M. informed a NRC staff member of the sexual assault. The NRC staff member told Plaintiff Sara M. that she was lying. Plaintiff Sara M. was later told by another woman resident that staff member JB had also sexually assaulted her. Subsequent to her sexual assault, Plaintiff Sara M., who has an extensive history of sexual abuse and sexual victimization, requested that she be given mental health trauma

treatment, to which the Defendants refused. Defendants continue to refuse to provide mental health trauma treatment to Plaintiff Sara M.

98. That on or about early October 2002, Plaintiff Sara M., while she was on the elevator returning from recreational therapy, was sexually assaulted by a NRC male resident "A" who fondled her vaginal area. She informed staff members of NRC of this sexual assault. The Defendants failed to take any action to protect Plaintiff Sara M. Defendants' agents and employees merely informed her that if she had a problem with male resident "A", she should stay on the ward. Male resident "A" has sexually harassed and attempted to sexually assault other women residents, including, but not limited to, Eve S.

99. That Plaintiff Sara M. has a prior history of sexual abuse and sexual victimization and a history of physical and emotional abuse of which the Defendants knew.

100. That the above-described sexual assaults were in violation of Plaintiff Sara M.'s constitutional rights, including but not limited to, rights secured by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the Constitution of the United States and Sections 1, 3, 5, and 7 of Article I of the Constitution of the State of Nebraska.

101. That the Defendants were aware of the actions of staff member JB and the male resident "A" and were aware that such conduct was occurring at the NRC and took no corrective action to stop the abusive conduct.

102. That the Defendants' failure to protect Plaintiff Sara M. consisted of a pattern or series of incidents of unconstitutional conduct which was condoned by the Defendants and became the represented policy and/or custom or practice of HHS and the NRC during the relevant time that Plaintiff Sara M. was a resident.

103. That as a direct result of the Defendants' actions and omissions, through their agents and employees, Plaintiff Sara M. was sexually assaulted. As a result of the sexual assaults, Plaintiff Sara M.'s injuries included the following: severe and permanent personal and emotional injuries, severe physical injuries, mental pain and suffering, permanent emotional trauma, and psychological injury. As a result of the injuries that she has suffered due to the sexual assaults, she has required, and will continue to require, counseling and mental health trauma treatment in an effort to help her recover from and attempt to cope with the emotional trauma and the re-traumatization which occurred at NRC while she was in the custody of the Defendants.

104. That the Defendants have failed and continue to fail to provide mental health trauma treatment to Plaintiff Sara M. despite her requests for such mental health trauma treatment.

**PLAINTIFF TAMICA S.**

105. That on or about September of 2001, the Plaintiff Tamica S. was sexually assaulted by a male resident PJ when she was in her room on Ward 3 West at NRC, to wit: the male resident PJ raped Plaintiff Tamica S. by coming into her room, climbing into her bed, and forcibly penetrating her vaginally from behind. Despite the fact that she had told him "no," he refused to stop sexually assaulting her.

106. That Plaintiff Tamica S. has a history of sexual victimization as a child and a history of emotional and physical abuse. That despite her history of sexual abuse, the Defendants have failed to provide appropriate mental health trauma treatment at NRC to the Plaintiff Tamica S.

107. That the above-described sexual assault was in violation of Plaintiff Tamica S.'s

constitutional rights, including but not limited to, rights secured by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the Constitution of the United States and Sections 1, 3, 5, and 7 of Article I of the Constitution of the State of Nebraska.

108. That the Defendants were aware of the actions of male resident PJ's history of predatory sexual behavior. Defendants were aware that such conduct was occurring at NRC and took no corrective action to stop the abusive conduct.

109. That the Defendants' failure to protect Plaintiff Tamica S. consisted of a pattern or series of incidents of unconstitutional conduct which was condoned by the Defendants and became the represented policy and/or custom or practice of HHS and NRC during the relevant time that Plaintiff Tamica S. was a resident.

110. That as a direct result of the Defendants' actions and omissions through their agents and employees, Plaintiff Tamica S. was sexually assaulted. As a result of the sexual assaults, Plaintiff Tamica S.'s injuries included the following: severe and permanent personal and emotional injuries, severe physical injuries, mental pain and suffering, permanent emotional trauma, and psychological injury. As a result of the injuries that she has suffered due to the sexual assault, she has required and will continue to require, counseling and mental health trauma treatment in an effort to help her recover from and attempt to cope with the emotional trauma and the re-traumatization which occurred at NRC while she was in the custody of the Defendants.

**PLAINTIFF KIMBERLY H.**

111. That on or about late June of 2002, the Plaintiff Kimberly H. was raped by EG, a male resident at NRC, to wit: EG accosted Plaintiff Kimberly H. in a stairway at NRC, removed the shorts of Plaintiff Kimberly H., and raped her by forcibly penetrating her vaginally from

behind.

112. That on or about the 3rd day of July, 2002, Plaintiff Kimberly H. reported to NRC staff that she was sexually assaulted by EG. Upon receipt of this information, the Defendants and their agents took no action against male resident EG, but instead moved Plaintiff Kimberly H. to a new ward at NRC and restricted the privileges of Plaintiff Kimberly H.

113. That the above-described sexual assault was in violation of Plaintiff Kimberly H.'s constitutional rights, including but not limited to, rights secured by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the Constitution of the United States and Sections 1, 3, 7, and 26 of Article I of the Constitution of the State of Nebraska and Section 18 of Article III of the Constitution of the State of Nebraska.

114. That the Defendants were aware of the actions of EG and were aware that such conduct was occurring at the NRC and took no corrective action to stop the abusive conduct.

115. That the Defendants' failure to protect Plaintiff Kimberly H. consisted of a pattern or series of incidents of unconstitutional conduct which was condoned by the Defendants and became the represented policy and/or custom or practice of HHS and the NRC during the relevant time that Plaintiff Kimberly H. was a patient.

116. That as a direct result of the Defendants' actions and omissions, through their agents and employees, Plaintiff Kimberly H. was sexually assaulted. As a result of the sexual assault, Plaintiff Kimberly H.'s injuries included the following: severe and permanent personal and emotional injuries, severe physical injuries, mental pain and suffering, permanent emotional trauma and psychological injury. As a result of the injuries that she has suffered due to the sexual assault, she has required and will continue to require, counseling, and mental health

trauma treatment in an effort to help her recover from and attempt to cope with the emotional trauma and the re-traumatization which occurred at NRC while she was in the custody of the Defendants.

**PLAINTIFF PAMELA B.**

117. That on or about August, 2002, the Plaintiff Pamela B. was sexually harassed by TL, a staff member at NRC, to wit: TL did state to Pamela B. that "he needed a suck." TL did also state to Pamela B. that "I would like to take you behind the back and fuck the shit out of you."

118. That Plaintiff Pamela B. has a history of emotional and physical abuse.

119. That on at least one of these occasions, the sexual harassment occurred in a public setting and within the hearing distance of other NRC staff. Despite the fact that the Defendants knew or should have known of the sexual harassment of Plaintiff Pamela B. by TL. The Defendants and their employees or agents failed to act to protect the Plaintiff and continued to allow TL to be in contact with Plaintiff Pamela B.

120. That the above-described sexual harassment was in violation of Plaintiff Pamela B.'s constitutional rights, including but not limited to, rights secured by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the Constitution of the United States and Sections 1, 3, 5, and 7 of Article I of the Constitution of the State of Nebraska.

121. That the Defendants were aware of the actions of TL and were aware that such conduct was occurring at the NRC and took no corrective action to stop the abusive conduct.

122. That the Defendants' failure to protect Plaintiff Pamela B. consisted of a pattern or series of incidents of unconstitutional conduct which was condoned by the Defendants and

became the represented policy and/or custom or practice of HHS and the NRC occurring in the relevant time that Plaintiff Pamela B. was a resident.

123. That as a direct result of the Defendants' actions and omissions, through their agents and employees, Plaintiff Pamela B. was sexually harassed. As a result of the sexual harassment, Plaintiff Pamela B's injuries included the following: severe and permanent personal and emotional injuries, mental pain and suffering, permanent emotional trauma, and psychological injury. As a result of the injuries that she has suffered due to the sexual harassment, she has required, and will continue to require, counseling and mental health trauma treatment in an effort to help her recover from and attempt to cope with the emotional trauma and the re-traumatization which occurred at NRC, while she was in the custody of the Defendants.

124. Defendants failed, and continue to fail, to provide Plaintiff Pamela B. with appropriate mental health trauma treatment at NRC as a result of the sexual harassment, which occurred at NRC.

#### **PLAINTIFF CAROLINE C.**

125. That at all material times, Plaintiff Caroline C., the lead representative plaintiff in the case entitled *Caroline C., et al., v. Dale Johnson, et al.*, Case No. 4:CV95-22, has an extensive history of sexual abuse, including repeated sexual victimization and re-traumatization as a resident at HRC. Plaintiff Caroline C. has been placed at the various facilities under the control and custody of the Defendants, including HRC, NRC, and LRC. Defendants were obligated to Plaintiff Caroline C., as a class member under the Consent Decree (Filing 133), to provide comprehensive mental health trauma treatment, both in their custodial facilities, such as HRC, NRC, and LRC, and any and all community programs. Plaintiff Caroline C. did not

receive the appropriate and individualized mental health trauma treatment while she was a resident of LRC under the control and custody of the Defendants.

126. That the Defendants failed to provide Plaintiff Caroline C. the appropriate trauma treatment in any of the community programs after her discharge from either HRC or LRC.

127. That during the Plaintiff Caroline C.'s recent stay at LRC, she was sexually assaulted by male resident DB on or about July 14, 2000, who fondled her breasts and genital area. DB continued to kiss her and fondle her despite her saying "no" to him.

128. That the above-described sexual assault was in violation of Plaintiff Caroline C.'s constitutional rights, including but not limited to, rights secured by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the Constitution of the United States and Sections 1, 3, 5, and 7 of Article I of the Constitution of the State of Nebraska.

129. That the Defendants were aware of the actions of DB and were aware that such conduct was occurring at LRC and took no corrective action to stop the abusive conduct. The Defendants knew and were aware that Plaintiff Caroline C. was unable to protect herself from sexually predatory male residents.

130. That the Defendants' failure to protect Plaintiff Caroline C. consisted of a pattern or series of incidents of unconstitutional conduct which was condoned by the Defendants and became the represented policy and/or custom or practice of HHS and LRC occurring in the relevant time that Plaintiff Caroline C. was a resident.

131. That as a direct result of the Defendants' actions and omissions, through their agents and employees, Plaintiff Caroline C. was sexually assaulted. As a result of the sexual assault, Plaintiff Caroline C.'s injuries included the following: severe and permanent personal



and emotional injuries, severe physical injuries, mental pain and suffering, permanent emotional trauma, and psychological injury. As a result of the injuries that she has suffered due to the sexual assault, she has required, and will continue to require, counseling and mental health trauma treatment in an effort to help her recover from and attempt to cope with the emotional trauma and the re-traumatization which occurred at LRC, while she was in the custody of the Defendants.

132. Defendants failed and continue to fail, to provide Plaintiff Caroline C. with appropriate mental health trauma treatment at LRC, despite her history of sexual abuse and continued sexual exploitation, while in the custody of the Defendants.

**PLAINTIFF JOELENE B.**

133. That on or about September, 2002, the Plaintiff Joeline B. was admitted to HRC and placed in the control, custody, and care of the Defendants herein for adequate and appropriate mental health treatment and remained in the custody and control of the Defendants at HRC until October, 2002.

134. That Plaintiff Joeline B. has a history of sexual abuse and sexual victimization from multiple perpetrators and a history of emotional and physical abuse.

135. That the Defendants, through their agents and employees at HRC knew, or should have known, of the history of victimization of Plaintiff Joeline B. during the course of her placement at HRC.

136. That the Defendants, their agents and employees at HRC failed to offer and provide to Plaintiff Joeline B., mental health trauma treatment in direct violation of the terms and conditions of the Consent Decree in the case entitled *Caroline C., et al., v. Dale Johnson, et al.*,

137. That the above-described failure to provide adequate and appropriate mental health trauma treatment was in violation of Plaintiff Joelene B.'s constitutional rights, including but not limited to, rights secured by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the Constitution of the United States and Sections 1, 3, 5, and 7 of Article I of the Constitution of the State of Nebraska.

138. That the Defendants were aware of the actions of their agents and employees at HRC in failing and refusing to provide adequate and appropriate mental health trauma treatment and were aware that such conduct was occurring at the HRC and took no corrective action to provide trauma treatment to Plaintiff Joelene B.

139. That the Defendants' failure to provide Plaintiff Joelene B. with adequate and appropriate mental health trauma treatment consisted of a pattern or series of incidents of unconstitutional conduct. That said conduct was condoned by the Defendants and became the represented policy and/or custom or practice of HHS and HRC during the relevant time that Plaintiff Joelene was a resident.

140. That as a direct result of the Defendants' actions and omissions through their agents and employees, Plaintiff Joelene B. was denied appropriate and adequate trauma treatment for her untreated trauma. As a result of the untreated trauma, Plaintiff Joelene B. suffered additional trauma and psychological injury which will necessitate additional mental health trauma treatment in the future.

**PLAINTIFF SUSAN Z.**

141. That on or about October 2002, the Plaintiff Susan Z. was admitted to HRC and

placed in the care of the Defendants herein for adequate and appropriate mental health treatment and remained in the custody and control of the Defendants at HRC until November, 2002.

142. That Plaintiff Susan Z. has a history of sexual abuse and sexual victimization from multiple perpetrators and a history of emotional and physical abuse.

143. That the Defendants, through their agents and employees at HRC, knew or should have known of the history of victimization of Plaintiff Susan Z., during her placement at HRC.

144. That the Defendants, through their agents and employees, at HRC failed to offer and provide to Plaintiff Susan Z. mental health trauma treatment in direct violation of the terms and conditions of the Consent Decree in the case entitled *Caroline C., et al., v. Dale Johnson, et al.*, Case No. 4:CV95-22. (Filing 133).

145. That the above-described failure to provide adequate and appropriate mental health trauma treatment was in violation of Plaintiff Susan Z.'s constitutional rights, including but not limited to, rights secured by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the Constitution of the United States and Sections 1, 3, 5, and 7 of Article I of the Constitution of the State of Nebraska.

146. That the Defendants were aware of the actions of their agents and employees at HRC, in failing and refusing to provide adequate and appropriate mental health trauma treatment and were aware that such conduct was occurring at the HRC and took no corrective action to provide trauma treatment to Plaintiff Susan Z.

147. That the Defendants' failure to provide Plaintiff Susan Z. with adequate and appropriate mental health trauma treatment consisted of a pattern or series of incidents of unconstitutional conduct which was condoned by the Defendants and became the represented

policy and/or custom or practice of HHS and HRC during the relevant time that Plaintiff Susan Z. was a resident.

148. That as a direct result of the Defendants' actions and omissions, through their agents and employees, Plaintiff Susan Z. was denied appropriate and adequate trauma treatment for her untreated trauma. As a result of the untreated trauma, Plaintiff Susan Z. suffered additional trauma and psychological injury, which will necessitate additional mental health trauma treatment in the future.

#### **FACTUAL ALLEGATIONS COMMON TO REPRESENTATIVE PLAINTIFFS**

149. That Defendants knew, or should have known, that women with mental illness and/or psychiatric disabilities, are particularly vulnerable to sexual assault, sexual victimization, and sexual exploitation at custodial institutions.

150. That Defendants knew, or should have known, that women with mental retardation and/or other developmental disabilities, are particularly vulnerable to sexual assault, sexual victimization, and sexual exploitation at custodial institutions.

151. That Defendants knew, or should have known, that women with histories of childhood sexual assault or other histories of rape, are particularly vulnerable to sexual assault, sexual victimization, and sexual exploitation at custodial institutions.

152. That the Defendants knew that Plaintiffs Elizabeth M., Selena T., Jennifer H., Juliana W., Penny G., Theresa L-R., Mary W., Ethel H., Robin H., Tamica S., Kimberly H., Pamela B., Caroline C., Joelene B., and Susan Z. have a diagnosis of mental illness.

153. That the Defendants knew that Plaintiffs Selena T. and Penny G. have mild mental retardation and/or developmental disabilities, in addition to their mental illnesses.

154. That the Defendants knew that Plaintiffs Elizabeth M., Theresa L-R., Selena T., Robin H., Penny G., Kimberly H., Tamica S., Joelene B., Susan Z., Caroline C., Ethel H., Juliana W. and Mary W. have histories of sexual victimization or rape prior to hospitalization at LRC, NRC, and HRC.

155. That Defendants knew that the Representative Plaintiffs at LRC, NRC, and HRC had a history of physical or emotional abuse and failed to provide appropriate trauma treatment to them.

156. That Defendants knew, or should have known, that a staff member was sexually aggressive and assaultive toward woman residents at LRC, and knew or should have known that the staff member was even sexually harassing women staff members at LRC.

157. That Defendants knew, or should have known, that staff members at custodial facilities such as NRC, engaged in sexual assaults and sexual harassment of vulnerable women residents with a mental illness and history of sexual exploitation.

158. That Defendants knew, or should have known, that certain male residents at NRC, LRC, and HRC, have been identified as sexual perpetrators, and have known histories of sexual violence against vulnerable women.

**FIRST CAUSE OF ACTION**  
**FAILURE TO PROTECT FROM HARM**

159. Plaintiffs reallege and incorporate paragraphs 1 through 158, as if fully set forth herein.

160. That by the Defendants' actions and omissions, and each of them as set forth above, and through their agents, departments, and employees, represented that they would provide

rehabilitative, habilitative, and mental health trauma treatment services in a custodial setting to women who have mental illnesses and/or other disabilities, such as the Plaintiffs. The custodial nature of the services and the authority of the Defendants to restrict the Plaintiffs' liberty created a "special relationship" with such women residents at LRC, NRC, and HRC, including the Plaintiffs, while in the custody of the Defendants. This "special relationship" included the following:

- (a) a duty to safeguard and protect such women residents, including the Plaintiffs, from emotional, mental, psychological, sexual, and physical harm, either by the Defendants, the Defendants' agents, other male residents, and other persons on the premises of LRC, NRC, and HRC;
- (b) a duty not to neglect the women residents and their special needs, including the Plaintiffs, and to exercise all reasonable measures to protect them while in custody and to protect their bodily integrity, privacy, and self-autonomy, while ensuring their freedom of expression, individual self-fulfillment, rehabilitation, treatment, and amelioration of their mental illnesses; and
- (c) a duty to take affirmative steps to ameliorate threats to the Plaintiffs' health and safety as they become known to the Defendants, by and through their agents, departments, and employees.

161. The Defendants by and through their agents and employees, failed to carry out these

obligations, which resulted in a breach of the Defendants' legal duties to the Plaintiffs. The Defendants thereby violated the Plaintiffs' following rights guaranteed by the First, Fourth, Fifth, Ninth and Fourteenth Amendments of the U.S. Constitution, i.e., protection from physical and psychological harm, protection from rape, sexual assault, and sexual abuse; protection of their personal bodily integrity; and their freedom of association, right of travel, and speech in the following particulars, *inter alia*:

- (a) Allowed and tolerated known sexually aggressive male staff and residents to have unmonitored contact with, and to repeatedly rape, sexually assault, and sexually harass vulnerable Plaintiffs and class members from 2000 to the present.
- (b) After becoming aware of the pattern of repeated sexual assaults and/or sexual harassment upon Plaintiffs and class members by sexually aggressive male staff members and male residents, the Defendants failed to take reasonable steps to protect Plaintiffs and class members from intrusions of their bodily security and person and invasions of privacy by: failing to place restrictions upon the identified sexual perpetrators; adopting a policy, practice, or custom that nothing could be done to further protect Plaintiffs and class members; allowing the perpetrators unlimited access to LRC, NRC, and HRC grounds, Plaintiffs and class members; failing to remove perpetrating male staff members from direct contact with Plaintiffs and class members; failing to treat the perpetrating male

residents as sex offenders in a more secure facility; and failing to adopt policies and procedures protecting the vulnerable Plaintiffs and class members from sexually aggressive male staff and residents.

- (c) Failed to provide appropriate security services at LRC and NRC, security procedures, screening, and monitoring procedures to protect the Plaintiffs and class members while in the Defendants' custody from physical, sexual, and psychological harm by male staff and residents at LRC and NRC.
- (d) Failed to adequately train and supervise their employees and agents in their obligation to report and investigate sexual assault complaints.
- (e) Adopted a policy, practice, or custom of restricting privileges to those Plaintiffs and class members who notified Defendants and their employees and agents of the rapes and sexual assaults by male staff or residents.
- (f) Adopted or allowed the custom and/or practice of "trading" residents between and among the three regional centers so as to allow convicted sex offenders and sexual perpetrators to be transferred into co-ed wards at LRC, HRC, and NRC where at least one of the Plaintiffs had been transferred, without any restrictions upon access to Plaintiffs or class members.



- (g) Failed to screen residents for prior sexual victimization, vulnerability to sexual victimization, or ability to avoid sexual victimization at LRC and NRC.
- (h) Failed to implement appropriate psychosocial educational and training programs specifically designed for Plaintiffs and class members with developmental disabilities and psychiatric disabilities to acquire prevention skills to avoid rape and sexual assault at LRC and NRC.
- (i) Failed to implement appropriate psychosocial sex education courses or assertiveness training to Plaintiffs and class members with developmental or psychiatric disabilities, either to assist them in their capacity to refuse consent to sexual contact or exploitation or to otherwise avoid victimization or the transmission of sexually transmitted diseases, including HIV at LRC and NRC.
- (j) Failed to develop and implement a protocol for assessing whether Plaintiffs with mental retardation and/or other developmental disabilities have the capacity to consent to sexual activities at LRC and NRC.
- (k) Failed to assess each Plaintiff and class member for her capacity to consent to sexual intercourse at LRC and NRC.
- (l) Failed to design behavioral training programs to ameliorate Plaintiffs' and other class members' vulnerability to sexual assault

and exploitation while in the Defendants' custody at LRC and NRC.

- (m) Failed to design and implement education and skills training in sexuality, rape prevention, and sexual exploitation in the custodial institutional setting at LRC and NRC.
- (n) Failed to provide appropriate psychiatric and psychological counseling and therapy to treat the trauma and harm to Plaintiffs and class members, as a direct and proximate result of the rapes, sexual assaults, and sexual harassment at LRC, NRC, HRC, and community programs in violation of the Consent Decree entered Dec. 23, 1998 in the case entitled *Caroline C., et al., v. Dale Johnson, et al.*, Case No. 4:CV95-22 (Filing 133);
- (o) Failed to adopt minimum standards in policies and procedures for preventing sexual assault, sexual abuse, and sexual harassment of their residents at LRC and NRC.
- (p) Failed to address sexuality components and the capacity to consent to sexual activity in the Plaintiffs' individualized treatment plans at LRC and NRC.
- (q) Failed to adopt minimum standards in policies and procedures for screening prospective employees regarding sexually predatory and/or sexually exploitative behavior at HRC, LRC, and NRC.
- (r) Failed to adopt minimum standards in policies and procedures for responding to

information regarding employees alleged to be engaging in sexually predatory and/or sexually exploitative behavior at HRC, LRC, and NRC.

162. That the pattern of rapes and sexual exploitation of Plaintiffs by male staff and other male residents created an inherently dangerous environment for Plaintiffs and class members.

163. That the Defendants' actions and omissions, and each of them, as set forth above, occurred as a result of "deliberate indifference" to or a "reckless disregard" of the enumerated rights of the Plaintiffs and class members, as set forth above.

164. That the Defendants' actions and omissions, and each of them as set forth above, was a substantial departure from acceptable professional judgment, practice, and standards.

165. That as a direct and proximate result of the actions and omissions of the Defendants, as set forth in paragraphs 1 through 164, each of the Plaintiffs have been permanently injured and have suffered irreparable harm.

166. That the Defendants' failure to protect the Plaintiffs and the class members from harm and to provide treatment, habilitation, and rehabilitation, violated the Plaintiffs' and the class members' rights under the First, Fourth, Fifth, and Ninth Amendments as applied through the Fourteenth Amendment, to a liberty interest of protection from harm, to treatment, to freedom of speech, association and travel, and an unreasonable seizure of their person and the constitutional rights secured to them by the provisions of the Consent Decree entered December 23, 1998 in the case entitled *Caroline C., et al., v. Dale Johnson, et al.*, Case No. 4:CV95-22. (Filing 133).

167. Plaintiffs have no adequate remedy at law.

SECOND CAUSE OF ACTION  
RIGHT TO TREATMENT

168. Plaintiffs reallege and incorporate paragraphs 1 through 167, as if fully set forth herein.

169. That the Defendants' actions and omissions, and each of them as set forth above, failed to provide appropriate essential services necessary for the treatment, habilitation, rehabilitation, and amelioration of the Plaintiffs' mental illnesses and/or developmental disabilities. Those services not provided to the Plaintiffs include, but are not limited to: appropriate and effective nursing care, medical care, academic instruction, occupational therapy, social, and independent living skills training, recreational therapy, vocational training and rehabilitative, psychological testing, psychiatric care, individualized training, meaningful physical education, discharge planning and the provision for a system of community-based mental health residential facilities designed to meet the individual needs of Plaintiffs.

170. That the Defendants failed to provide an appropriate and effective program of individualized habilitative and rehabilitative trauma treatment at LRC, NRC, and HRC. This would include Defendants' failure to plan and provide community-based mental health residential facilities with trauma treatment for the Plaintiffs after their discharge from LRC, NRC, and HRC.

171. That the Defendants maintained, and continue to maintain, administrative and clinical structures at LRC, NRC, and HRC which have caused, and are reasonably foreseeable to cause harm and ongoing violations of federally protected rights of treatment, habilitation, and rehabilitation to Plaintiffs and class members in the following particulars:

- (a) An administrative structure which delegates all policy and

procedure promulgation to a "medical staff" whose membership is limited to physicians;

- (b) The basic unit of organization is the facility, rather than treatment or rehabilitation program, in which the purpose is implicit rather than written, and is limited to housing the Plaintiffs admitted to the facility rather than producing any desirable effects on Plaintiffs' functioning outside the hospital;
- (c) Policies and procedures which are generally facility-wide aimed at maintaining the authority of the administrative hierarchy while diffusing accountability;
- (d) The primary treatment modality is behavior-controlling drugs while other "treatments" may be provided, but are seen as secondary only, and Plaintiffs' status are considered unrelated to their response to any treatment other than drug treatment;
- (e) Direct care staff are inadequately trained to provide appropriate and effective trauma treatment;
- (f) LRC, NRC, and HRC treatment approach is dominated by the Plaintiffs' "mental illnesses" while their other, often related problems are neglected, even though they may be critical to the maintenance of the Plaintiffs' "mental illnesses" and to the Plaintiffs' abilities to function outside an institution.

172. The Defendants have failed to implement administrative and clinical structures

which are reasonably foreseeable to increase sensitivity to residents' rights and welfare; to increase the sense of responsibility for residents' welfare among the professional staff; to decrease the risk of resident harm and to otherwise secure federally protected rights to trauma treatment, habilitation, and rehabilitation at LRC, NRC, and HRC, in the following particulars, to wit:

- (a) Failed to develop individualized functional assessments of the trauma treatment needs of the Plaintiffs and of sufficient scope and quality to support effective trauma treatment and habilitation;
- (b) Failed to develop a multi-disciplinary professional staff with comprehensive oversight responsibility for residents' safety and welfare;
- (c) Failed to develop as the basic unit of organization the treatment or rehabilitation program with objective measurement criteria for success and clearly delineated accountability and responsibility of professional staff involved in treatment;
- (d) Failed to develop and implement policies and procedures which establish responsibility and accountability for resident safety and welfare;
- (e) Failed to adequately train staff in trauma treatment techniques;
- (f) Failed to adequately supervise the staff with appropriately trained professionals who actively monitor the staff's day-to-day management of the Plaintiffs; and

- (g) Failed to develop an appropriate discharge planning process and monitoring mechanism; and failed to develop a system of community mental health residential facilities to implement and monitor any discharge recommendations and provide trauma treatment in the community.

173. That the Defendants' actions and omissions and each of them as set forth above, was a substantial departure from acceptable professional judgment, practice and standards.

174. That as a direct and proximate result of the actions and omissions of the Defendants, as set forth in paragraphs 1 through 173, each of the Plaintiffs have been permanently injured and have suffered irreparable harm.

175. That the Defendants' failure to protect the Plaintiffs and the class members from harm and to provide trauma treatment, habilitation, and rehabilitation, violated the Plaintiffs' and the class members' rights under the First, Fourth, Fifth, and Ninth Amendments, as applied through the Fourteenth Amendment, to a liberty interest of protection from harm, to treatment, to freedom of speech, association and travel, and an unreasonable seizure of their person.

176. Plaintiffs have no adequate remedy at law.

**THIRD CAUSE OF ACTION**  
**FAILURE TO IMPLEMENT PROGRAMS DESIGNED TO PROTECT**  
**CONSTITUTIONAL AND STATUTORY RIGHTS AS MANDATED PURSUANT TO**  
**THE CAROLINE C. CONSENT DECREE**

177. That Plaintiffs reallege and incorporate paragraphs 1 through 176, as if fully set forth herein.

178. On or about December 23, 1998, the United States District Court for the District of

Nebraska, approved and entered a Consent Decree to settle a class action against the Nebraska Department of Public Institutions, now known as the Nebraska Department of Health and Human Services System, in the *Caroline C., et al., v. Dale Johnson, et al.*, Case No. 4:CV95-22. (Filing 133).

179. The certified class members in *Caroline C.* Consent Decree were defined as “(1) All women who have been sexually assaulted or raped by male patients at the HRC; and (2) All women who are, or in the future, will be institutionalized as patients at the HRC.”

180. This Court has jurisdiction over the *Caroline C.* Consent Decree until January 1, 2003, by joint stipulation of both parties in the case. (Filings 179 and 180).

181. The purpose of the *Caroline C.* Consent Decree was to enforce and secure to the class members, their constitutional and statutory rights under the United States Constitution, Nebraska Constitution, federal statutes, Nebraska statutes and their implementing regulations.

182. Specifically, in the *Caroline C.* Consent Decree, the Defendants agreed to implement programs for Class members/Women in the regional centers and in the community to enforce and secure their constitutional and statutory rights, including taking specific actions designed to protect Class members from future violation of their rights and to ameliorate conditions which had given rise to the prior violations of their rights.

183. That the named representative Plaintiffs in this case are also class members of the *Caroline C.* class and are entitled to all rights and privileges encompassed in the *Caroline C.* Consent Decree.

184. That by the Defendants' actions and omissions, they have failed to substantially comply with these protective and ameliorative provisions of the *Caroline C.* Consent Decree.



185. That pursuant to the Consent Decree, the Nebraska Department of Health and Human Services System is required to act to establish and maintain a safe therapeutic environment for class members at HRC, state facilities, and in community-based services.

186. That the Defendants failed and refused to substantially comply with the requirements of the *Caroline C.* Consent Decree to establish and maintain a safe therapeutic environment for class members, including, but not limited to, the following particulars, to wit:

- (a) Defendants failed to act to protect the class members from predation at programs at LRC and NRC, to wit: allowed class members to be subjected to predatory behavior by both staff members and male residents at LRC and NRC under their direct control.
- (b) Defendants failed to act to adequately monitor and report "Type A" abuse, as defined by the *Caroline C.* Consent Decree, against members of the class at LRC and NRC, to wit: failing to monitor report "Type A" abuse occurring against class members by predatory male staff and male residents at LRC and NRC under their direct control.
- (c) That Defendants' actions and practices permitted the transfer of class members from the HRC to other Regional Center facilities, to wit: releasing class members from HRC without adequate treatment program in the community, and then having the class members taken into either LRC or NRC instead of returning the class member to HRC when, due to the inadequacy of the treatment plan, the class members required re-hospitalization at a facility under the direct control of the Defendants.

187. Specifically, the Defendants failed and refused to substantially comply with the requirements of the *Caroline C.* Consent Decree, to develop and implement appropriate mental health trauma treatment for class members, including, but not limited to, the following respects:

- (a) Defendants failed to adequately plan and provide for trauma treatment to the class member Plaintiffs after their discharge from HRC, to wit: Defendants failed to sufficiently address trauma issues, both by failing to assure timely implementation of a trauma treatment program within the various regions within the state and by failing to provide trauma treatment for class members who re-entered Defendant managed facilities at LRC and NRC.
- (b) Defendants failed to treat the re-traumatization of class members after release from the HRC, to wit: even after the reported rapes, sexual assaults, and sexual harassment which occurred against the class member Plaintiffs at LRC and NRC, the Defendants denied the Plaintiffs' repeated requests for trauma treatment.
- (c) Defendants failed substantially to perform their obligation to ensure that Regional Governing Boards develop and provide trauma treatment programming for class members in the community, and failed to provide on-going monitoring of any such programs, to wit: the Defendants allowed class members to be released to individual providers who controlled and implemented their own treatment programs without determining the scope of any such program, or whether any particular provider actually provided trauma treatment programs; Defendants permitted one of the Regions to not participate in the trauma treatment training program, as arranged through HRC in conjunction with its compliance efforts

under the *Carolyn C.* Consent Decree.

- (d) Defendants failed to substantially comply with the trauma treatment requirements for class members mandated by the *Caroline C.* Consent Decree, both in regard to the inpatient environment and in regard to the said Consent Decree's emphasis on continuity into less restrictive settings, to wit: the Defendants denied and restricted class members access to post-release access group/individual therapy and trauma treatment at the HRC facility.

188. Currently, the Defendants continue to deny trauma treatment to the Plaintiffs in direct violation of the *Caroline C.* Consent Decree.

189. That as a direct and proximate result of the actions and omissions of the Defendants, as set forth in paragraphs 1 through 188, each of the Plaintiffs have been permanently injured and have suffered irreparable harm.

190. Plaintiffs have no adequate remedy at law.

**FOURTH CAUSE OF ACTION**  
**VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT(ADA)**

191. That Plaintiffs reallege and incorporate paragraphs 1 through 190, as if fully set forth herein.

192. That Plaintiffs, and each of them, has at least one "disability", as the term is defined in the ADA, 42 U.S.C. § 12101 *et seq.*, as amended, and as such, Plaintiffs have a right to the services and protection, procedures, and rights enumerated in ADA and its implementing regulations, while in the Defendants' custody, including reasonable accommodations for such disabilities.

193. That the Defendants' acts and omissions violated the rights of the Plaintiffs' and the class members' rights pursuant to the ADA, as amended, and its implementing regulations.

**FIFTH CAUSE OF ACTION**  
**VIOLATIONS OF SECTION 504 OF THE REHABILITATION ACT**

194. That Plaintiffs reallege and incorporate paragraphs 1 through 193, as if fully set forth herein.

195. That the Plaintiffs, and each of them, has at least one "handicap", as the term is defined in Section 504, 29 U.S.C. § 794 et seq., as amended, and as such, Plaintiffs have a right to the services and protection, procedures, and rights enumerated in Section 504, while in the Defendants' custody, including reasonable accommodations for such handicaps.

196. That the Defendants' acts and omissions violated the rights of the Plaintiffs and the class members pursuant to Section 504, 29 U.S.C. § 794 et seq., as amended, and its implementing regulations.

**SIXTH CAUSE OF ACTION**  
**VIOLATION OF EQUAL PROTECTION**

197. That Plaintiffs reallege and incorporate paragraphs 1 through 196, as if fully set forth herein.

198. Plaintiffs and class members are members of a group which have historically suffered sexual and physical abuse, sexual assault and rape while in the custody of state officials. In addition, Plaintiffs and class members have been an insular and persecuted minority, stigmatized, and powerless while in the custody of state officials.

199. Defendants' failure to protect Plaintiffs' personal bodily integrity and privacy and adopt policies and procedures designed to remedy past violations deny Plaintiffs' equal

protection of the laws. Thus, Defendants have created and continue to perpetuate an inherently dangerous living situation; whereas male patients at LRC, NRC, and HRC are afforded a secure living situation while the women patients are denied the same while in Defendants' custody.

200. Defendants' acts and omissions constitute an intentional and invidious discrimination based upon Plaintiffs' gender, to wit: allowing male patients privileges and federally protected rights while denying female patients the same privileges and federally protected rights on the basis of their gender.

### **PLAINTIFFS' PRAYER FOR RELIEF**

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

- A. Continue and extend jurisdiction over this action under the Consent Decree entered December 23, 1998, in the case entitled *Caroline C., et al., v. Dale Johnson, et al.*; Case No. 4:CV95-22. (Filings 133, 179 and 180) and assume jurisdiction over this action;
- B. Issue an Order that this action be certified as a class action pursuant to Fed. R. Civ. P. 23;
- C. Issue a Declaratory Judgment that the Defendants have violated the Plaintiffs' federal constitutional rights and statutory and administrative rights under Nebraska law, and to establish the minimum standards necessary as to the habilitation, treatment, rehabilitation, and ameliorative services, programs, ancillary support and associated services required to be provided to the Plaintiffs;

- D. Issue a Declaratory Judgment that the Defendants' pattern and practice, actions and omissions, violated the Plaintiffs' rights under the First, Fourth, Fifth, Ninth, and Fourteenth Amendments of the U.S. Constitution and under 42 U.S.C. § 12101 *et seq.*, as amended; and 29 U.S.C. § 794 *et seq.*, as amended, and declaring further that the rights so violated are present rights which must be immediately respected by the Defendants;
- E. Issue a permanent Injunction enjoining the Defendants from their policy and practice of placing and housing known and identified sexually aggressive male residents with more vulnerable woman residents with mental illnesses and developmental disabilities;
- F. Issue a permanent Injunction enjoining the Defendants from their policy and practice of failing to adequately assess risks, diagnose, treat, monitor, and supervise placement of sexually aggressive male residents at the LRC, NRC, and HRC;
- G. Issue a permanent Injunction enjoining the Defendants from their policy and practice of punishing either by ward restriction, use of restraints, or seclusion under the pretext of "protection", those women who report rapes, sexual assaults, and sexual harassment by sexually aggressive male residents or staff employees at HRC, LRC, and NRC;
- H. Issue an Order requiring the Defendants to develop appropriate trauma treatment programs, including a system of community mental

health residential facilities meeting the mental health trauma treatment needs of the individual Plaintiffs and the class of women in the custody and care of HHS and at the Regional Centers across the State;

- I. Issue an Order requiring the Defendants to adopt a trauma treatment model that will meet a constitutionally minimum standard to protect Plaintiffs from harm and provide treatment, to wit:
  - (a) an administrative structure which distributes leadership across disciplines in a "multi-disciplinary professional staff";
  - (b) the basic unit of organization which is the treatment or rehabilitation "program", which may be housed within a hospital or other type of facility, which has an explicitly stated purpose or "mission" amenable to objective measurement of success, and has the goal of returning residents to higher levels of functioning, both within and outside the institution;
  - (c) have policies and procedures specific to the programs which are aimed at supporting the role and mission of the treatment or rehabilitation programs and clearly indicate responsibility, as well as authority;
  - (d) that residents gain admission to treatment or rehabilitation programs by matching criteria which are part of the programs' mission, policy and procedures which define the specific problems which the programs are designed to effectively treat;

(e) that treatment includes biological (medications), psychological, psychosocial modalities, which are strategically planned and coordinated, and the resident's status is determined by response to treatments beyond drug-induced control of symptoms;

(f) that direct care staff are skilled technicians who receive intensive and ongoing training in treatment and rehabilitation techniques, whose work is continuously supervised by professionals, and whose role is explicitly recognized in policies and procedures as critical to treatment or rehabilitation success;

(g) that all factors affecting the resident's ability to function both inside and outside the institution are addressed in treatment, including social and independent living skills not narrowly associated with the resident's "mental illness";

(h) that treatment staff are trained to discriminate the "person" from the "mental illness" and/or other disabilities;

J. Issue an Order requiring the Defendants to implement a plan of staff training which includes sensitivity training to both the sexuality of people with mental illnesses and the possible problems with consent, as well as what to do and what not to do, when they encounter inappropriate or controversial sexual behaviors, including the adoption of policies and procedures specific to each program;

K. Issue an Order requiring the Defendants to develop more specific



policies and procedures in regard to appropriate sexual expression; assessments for the capacity to consent; sex education; and the reporting and investigation of abuses and vigorous enforcement of policies;

- L. Issue an Order requiring the Defendants to take abuse histories on admission and at periodic intervals, provide subsequent appropriate treatment, and teach effective skills so that residents can deal with dangerous or exploitative experiences in the institution or on their return to the community, to develop affirmative policies and training to prevent rape and sexual abuse;
- M. Issue an Order requiring the Defendants to utilize appropriate risk assessment techniques to identify sex offenders and potential sex offenders among residents, and to provide the resident so identified appropriate mental health treatment and rehabilitation;
- N. Issue an Order requiring the Defendants to develop and implement policies protecting both residents and Defendants' employees who report allegations of sexual assault, sexual harassment, abuse, and neglect;
- O. Issue an Order requiring the Defendants to provide trauma treatment and rehabilitation of the named Plaintiffs and all other known victims of sexual assault who are class members and reside in Defendants' custodial facilities, to wit: HRC, LRC, and NRC;

- P. Issue an Order requiring the Defendants to treat "resident to resident" harm by carefully evaluating the harm as a failure of staff to supervise residents and as a failure to provide adequate and effective rehabilitation services, and to require that staff be held accountable;
- Q. For an Order directing the Defendants to take any other affirmative steps to protect all members of the Plaintiff class from harm by providing them with appropriate safety and protection from sexual assaults, including such specialized programs where programs and related services are necessary for the delivery of mental health treatment and rehabilitation consistent with the individual needs of the members of the Plaintiff class, and to do so under a specific time-limited plan approved and monitored by this court;
- R. For an Order directing the Defendants to create "all women safe units" in each of the three Regional Centers;
- S. For an Order directing the Defendants to create, provide support, develop, maintain, and regularly meet and confer with an on-site consumer group for and selected by the class members at each Regional Center entitled the "Women's Council" at all three Regional Centers on safety and treatment issues and concerns which impact upon women residents in the Defendants' facilities;
- T. For an Order directing the Defendants to create and implement a comprehensive pre-hiring procedure and process designed to identify and reject potential employees who have a history of abuse or neglect of persons with disabilities, and sexual

exploitation or sexual abuse of minors and women;

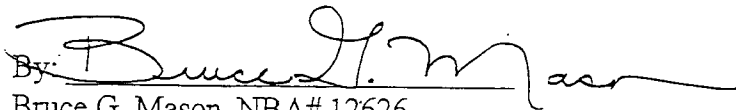
- U. Issue an Order appointing a Master to oversee and monitor the Defendants' implementation and compliance with any orders that this Court may deem necessary and proper to secure and protect the constitutional rights of the Plaintiffs;
- V. Issue an Order awarding such other and further relief as this Court may deem just and proper;
- W. Award the Plaintiffs' attorneys their costs and attorney fees as provided under 42 U.S.C. § 1988; and;
- X. Plaintiffs request trial in Omaha, Nebraska.

**Dated: December 13, 2002.**

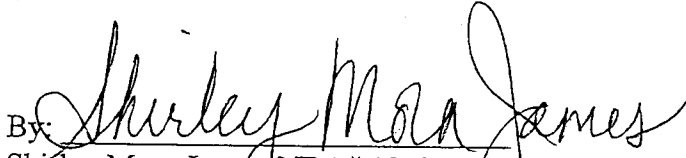
**Respectfully submitted,**

**ELIZABETH M.; SELENA T., by and through her legal guardian, CAROLYN TANKERSLEY; JENNIFER H.; JULIANA W.; PENNY G.; ETHEL H.; MARY W.; ROBIN H.; THERESA L.-R.; SARA M.; TAMICA S., by and through her legal guardian, SHAUNDA STARKS; KIMBERLY H., by and through her legal guardian, SANDRA TANI; PAM B.; CAROLINE C., by and through her legal guardian, THEDA CARTER; JOELENE B.; and SUSAN Z., and on behalf of themselves and on behalf of others similarly situated,**

**Plaintiffs,**

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