IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Case No.06-CV-01405

CLARENCE VANDEHEY;
WILLIAM LANGLEY;
SAMUEL LINCOLN; and
JARED HOGUE,

Plaintiffs, on behalf of themselves and all others similarly situated.

v.

LOU VALLARIO, Sheriff of Garfield County, Colorado, in his official capacity;
SCOTT DAWSON, a Commander in the Garfield County Sheriff's Department, in his official capacity,

Defendants.

FIRST AMENDED CLASS ACTION COMPLAINT

I. INTRODUCTION

1. In this class action, filed on behalf of current and future prisoners in the Garfield County Jail, Plaintiffs challenge a pervasive practice of subjecting prisoners to threats and use of excessive and disproportionate force.

2. The challenged practice is carried out through the frequent use and threatened use of pepperball guns, restraint chairs, tasers, pepper spray, and electroshock belts in a manner that 1) is not constrained by written policies designed to curb potential abuses; 2) departs from well-established standards of law enforcement and corrections professionals; 3) violates the manufacturers' and venders' recommendations and training regarding the safe and proper use of the devices; 4) poses substantial and unjustifiable risks to prisoners' health, safety, physical

integrity, and lives; 5) has caused extreme mental distress and physical harm, amounting in some cases to summary corporal punishment; and 6) violates prisoners' constitutional rights.

3. Plaintiffs also challenge a new policy of Defendants– which they purposely adopted to thwart and interfere with the investigation that led to this lawsuit – that has prevented and threatens to continue preventing prisoners from exercising their right to speak with attorneys who wish to speak with them in a confidential setting.

4. In this First Amended Complaint, Plaintiffs also challenge Defendants' denial of mental health care to indigent prisoners with serious mental health needs.

5. Finally, Plaintiffs challenge Defendants' policy of imposing serious deprivations, including sentences to the extreme isolation of "supermax" status, to punish prisoners for alleged disciplinary infractions, without due process of law and without following the procedures in the jail's Inmate Handbook.

II. OUTLINE AND INDEX OF ALLEGATIONS

6. The following provides an outline of the allegations of this Complaint, along with the number of the first paragraph that corresponds to each of the outline headings:

III. JURISDICTION AND VENUE

7. This action arises under the Constitution and laws of the United States, including 42 U.S.C. § 1983. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343. This

Court has supplemental jurisdiction over the claims based on Colorado law pursuant to 28.U.S.C. § 1367.

8. This Court has jurisdiction to issue the declaratory relief requested pursuant to the Declaratory Relief Act, 28 U.S.C. §§ 2201, 2202.

9. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b). All parties reside within the District of Colorado, and the events described in this Complaint occurred in the District of Colorado.

IV. PARTIES

A. Plaintiffs

10. Plaintiff Clarence Vandehey is an indigent pretrial detainee in the Garfield County Jail. Since childhood, he has suffered and continues to suffer from serious mental health problems that have not been adequately addressed during his stay at the Garfield County Jail. Since September, 2005, deputies have strapped him into the jail's restraint chair seven times; they have shot him with a pepperball gun on two occasions; they have forced him to wear an electroshock belt to court; and he has endured numerous additional threats of force from deputies wielding pepper spray, tasers, and the pepperball gun. Mr. Vandehey sues for injunctive and declaratory relief only, on behalf of himself and the Plaintiff class.

11. Plaintiff William Langley is an indigent prisoner who has been confined in the Garfield County Jail since the beginning of October, 2005. Since childhood, he has suffered and continues to suffer from serious mental health problems that have not been adequately addressed during his stay at the Garfield County Jail. Deputies have strapped him into the restraint chair at least five times, have forced him to wear an electroshock belt to court, and he has endured numerous additional threats of force from deputies wielding pepper spray, tasers, and the

pepperball gun. Mr. Langley sues for injunctive and declaratory relief only, on behalf of himself and the Plaintiff class.

12. Plaintiff Samuel Lincoln is an indigent pretrial detainee who was held in the Garfield County Jail continuously from December, 2005, until April, 2006, when he was moved to the Mesa County Jail. He still faces pending criminal charges in Garfield County, and as a result, he has returned to the Garfield County Jail on multiple occasions. He was housed in the jail from June 15 to June 17, 2006; he returned again on June 24, 2006, and again at the end of July, 2006. He is certain to return to the custody of the Garfield County Sheriff on additional occasions in the near future, where he will be subjected to an imminent risk of harm from the policies and practices that are challenged in this lawsuit. Mr. Lincoln sues for injunctive and declaratory relief only, on behalf of himself and the Plaintiff class.

13. Plaintiff Jared Hogue is a pretrial detainee in the Garfield County Jail. He has been forced to wear the electroshock belt and has been threatened with tasers, pepperball guns and pepper spray. On June 15, 2006, the Defendants prevented him from meeting with an attorney in a confidential setting. He sues for injunctive and declaratory relief on behalf of himself and the Plaintiff class. He also asks this Court to impose, for himself only, the statutory penalty described in C.R.S. § 16-3-404.

B. Defendants

14. Defendant Lou Vallario is the Sheriff of Garfield County, Colorado. He has final policy making authority for all matters relating to management of the Garfield County Jail. His employees and agents include the deputies who work in the jail as well as Defendant Scott Dawson. Sheriff Vallario is sued in his official capacity.

15. Defendant Scott Dawson holds the rank of Commander in the Garfield County Sheriff's Department. He is an agent and employee of Defendant Vallario. Defendant Dawson is in charge of the Detention Division of the Garfield County Sheriff's Department. The deputies at the jail are his agents and subordinates. He has primary responsibility for managing and supervising the day-to-day operations of the jail; for formulating and implementing policies and procedures; for ensuring that those policies and procedures are followed; and for ensuring that deputies are adequately trained to carry out their responsibilities in a manner consistent with the health, safety, welfare, and constitutional rights of prisoners. He is sued in his official capacity.

16. At all times relevant herein and with respect to all actions described herein, all Defendants and their agents and employees were acting under color of state law.

FACTUAL BACKGROUND

V. THREATS AND USE OF EXCESSIVE AND DISPROPORTIONATE FORCE AND PUNITIVE USE OF RESTRAINTS

17. Prisoners in the Garfield County Jail are subjected to a pervasive pattern, practice, and custom, in which deputies regularly escalate conflict and use and threaten to use excessive and disproportionate force. As part of that practice, deputies frequently use and threaten to use restraint chairs, pepper spray, the pepperball gun, tasers, and the electroshock belt, and various combinations of these devices, in a manner that 1) is not constrained by written policies designed effectively to curb potential abuses; 2) departs from widely-accepted standards of corrections and law enforcement professionals; 3) violates the manufacturers' and venders' recommendations and training regarding the safe and proper use of the devices; 4) poses substantial and unjustifiable risks to prisoners' health, safety, physical integrity, and lives; and 5) causes mental

distress, pain, physical injuries, and has amounted to summary corporal punishment; and 6) violates prisoners' constitutional rights.

A. Punitive Use of Restraints and Restraint Chairs

18. The restraint chair is a metal framed chair on wheels with seven straps designed to fully immobilize a prisoner's legs, arms, and body. When used as designed, arms are strapped to horizontal armrests. Legs and ankles are secured. Additional straps go around the prisoner's waist, and over each shoulder. Only the prisoner's head and neck retain some mobility.

19. The use of fully-immobilizing restraints such as the restraint chair poses substantial risks to prisoners' physical and mental health. As a report by the United States government's General Accounting Office noted in 1999, specific risks include "asphyxia, cardiac complications, drug overdoses or interactions, blunt trauma, strangulation or choking, fire/smoke inhalation, and aspiration (breathing vomit into the lungs)." The report states that a commonly prescribed antidepressant may result in metabolic problems when the person's movement is restricted, which can lead to life-threatening hypothermia. It also noted that potentially fatal cardiac arrhythmia can result from the combination of certain medications and the adrenaline produce by an individual's agitation and physical struggle while being restrained. The report noted several specific groups of persons who should be regarded as presenting a particular danger of potential health risks when placed in fully-immobilizing restraints, including persons with mental illness, persons with mental retardation, and persons with a history of substance abuse.

20. In a letter sent to Defendants in June, Amnesty International noted that at least 18 prisoners have died while strapped in restraint chairs in jails and prisoners in the United States.

Some of those deaths occurred after the prisoners had also been subjected to pepper spray and/or electroshock weapons. One such death occurred in a Colorado jail in the late 1990s.

21. Amnesty International also informed the Defendants that the United Nations Committee Against Torture had expressed its concern that the unregulated use of the restraint chair and electroshock weapons in the United States could lead to violations of this country's obligations under the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

22. In a response to the UN Committee, the United States acknowledged that use of restraint chairs should be "carefully circumscribed." The response relied on standards developed by the Department of Justice (DOJ), which state that restraint chairs should only be used to keep a prisoner from hurting himself or others and only when less restrictive means of controlling the prisoner have failed. The DOJ further states that restraint chairs should be "carefully controlled" and the prisoner should be monitored every 15 minutes, and vital signs should be checked. In addition, prisoners should be provided opportunities for movement, eating, and using the toilet. The response to the UN Committee further acknowledged that restraints must be removed "as soon as the inmate is no longer a threat to himself or others."

23. Amnesty's letter also informed the Defendants that the United Nations Standard Minimum Rules for the Treatment of Prisoners stipulate that restraints should never be applied as a punishment, and further provide that restraints may be used only when other measures are ineffective and only for so long as is "strictly necessary".

24. Widely-accepted standards of correctional associations adopt similar principles. The American Correctional Association (ACA) requires that jails draft written policies that forbid the use of restraints as punishment. Instead, restraints must be used "only in extreme

instances and only when other types of restraints have proven to be ineffective." The ACA standards also require that deputies keep a prisoner under continuous visual observation until healthcare authorities arrive and approve the use of restraints. Upon arrival, the healthcare personnel must "assess the inmate's medical and mental health condition," and must advise whether the prisoner presents a serious danger to self or others and whether the prisoner should be placed in a medical or mental health unit for medical management and supervision. The ACA standards also require that visual observation of a prisoner held in the restraint chair must be carried out every 15 minutes.

25. Manufacturers and venders of restraint chairs impose even greater restrictions on the use of the devices. For example, one vender of the Emergency Restraint Chair purchased by the Garfield County Jail advises on its web site as follows:

> Violent behavior may mask dangerous medical conditions therefore detainees must be monitored for and provided with medical treatment if needed. Detainees should not be left in the Emergency Restraint Chair for more than two hours. The Emergency Restraint Chair should **never** be used as a means of punishment.

http://www.restraintchair.com/diagram.htm, accessed July 4, 2006 (Emphasis in original)

26. The Defendants have not adopted any written policy governing or regulating the use of the restraint chair in the Garfield County Jail.

27. Pursuant to the custom and informal unwritten policy in place at the Garfield County Jail, deputies commonly and frequently use the restraint chair in a manner that violates international and national standards for treatment of prisoners; violates the recommendations of the venders and manufacturers; poses an unreasonable and unjustifiable risk of harm to prisoners' health and safety; causes mental distress, pain, and physical injuries; and violates prisoners' constitutional rights.

28. Indeed, in recent months, the Defendants have stepped up their reliance on the use of the restraint chair. Although the jail typically houses just over 100 prisoners who are under the Sheriff's direct supervision and control, the Defendants purchased 3 additional restraint chairs in February, 2006, bringing the total to five. After obtaining incident reports regarding only 10 current and former prisoners who signed release-of-information forms, attorneys for Plaintiffs obtained reports describing 23 separate times that deputies strapped prisoners into a restraint chair in the 4-month period between December, 2005, and March, 2006. On information and belief, that small sample represents only a fraction of the Defendants' regular and repeated use of the restraint chair.

29. Deputies regularly employ the restraint chair in cases where prisoners are not out of control and are not presenting an imminent risk of serious physical injury to themselves or others. Prisoners are regularly strapped into the restraint chair as punishment, and the threshold for such punishment is often only alleged minor breaches of jail discipline, such as kicking the cell door to attract the deputies' attention; yelling after refusing a deputy's order to stop; or passive noncompliance with deputies' orders. Deputies sometimes attempt to disguise the true purpose of their use of the restraint chair by falsely characterizing it, in their written incident reports, as a measure taken for the prisoner's "safety."

30. Defendant Dawson has acknowledged in writing that prisoners will be placed in the restraint chair if they "threaten" staff, even, apparently, when prisoners are locked in their cells and have no ability to act on any such threats. He has also acknowledged that prisoners will be strapped into the restraint chair when they "refuse to comply with orders."

31. Deputies regularly strap prisoners into the restraint chair without attempting to determine whether less restrictive measures would be effective. Deputies regularly keep

prisoners in the restraint chair long after any arguable need for continued restraint has passed and for far longer than the two-hour maximum time -- reserved for the most extreme cases-- urged by the chair's venders and manufacturers.

32. Prisoners are regularly strapped into the restraint chair without appropriate medical supervision. Deputies do not consult in advance with medical personnel to determine whether a particular prisoner suffers from any pre-existing medical conditions that pose particular risks when combined with fully-immobilizing restraint.

33. The Defendants do not require the jail's healthcare contractors to conduct an evaluation of a prisoner's medical and mental health status immediately after being placed in the restraint chair, and such evaluations are not conducted. Defendants do not require regular 15-minute checks of prisoners strapped into the restraint chair, and such regular 15-minute checks are not carried out.

34. Deputies regularly strap prisoners in the restraint chair in unnecessarily painful positions. The chair is designed so that deputies can remove a prisoner's handcuffs through an opening in the back of the chair and then strap the prisoner's arms to the chair's armrests. Instead of following that practice, deputies often strap prisoners into the chair while leaving their hands handcuffed behind their back. When the shoulder straps are then pulled tight, the chest is thrust forward as the arms and handcuffed hands are sandwiched between the prisoner's back and the back of the restraint chair, causing severe stress on the shoulders and upper chest. This position results in extreme and unnecessary pain, which prisoners have been forced to endure for hours.

35. For prisoners, being strapped into the restraint chair is frequently uncomfortable, painful, and even terrifying. Prisoners feel helpless and vulnerable. While strapped in the

restraint chair, prisoners have endured panic, mental distress, humiliation, extreme physical pain, and have also suffered physical injuries.

36. Deputies commonly taunt prisoners, ridicule them, and subject them to cruel and humiliating treatment while they are in the restraint chair. While in the booking section of the jail, Mr. Vandehey overheard a woman who was strapped into a restraint chair. She was crying that she wanted an attorney and that she needed to go to the bathroom, and the deputies told her to "go ahead and go" while she was strapped in the chair. The deputies mimicked her and ridiculed her frequent requests to go to the bathroom.

37. Deputies forced another woman to endure the same humiliating and degrading treatment a month before Mr. Vandehey first arrived at the jail. She reports that she was in a mental health crisis, suicidal, and strapped in the restraint chair for hours while deputies would not let her get up to urinate. They told her to shut up and stay in the chair and urinate on herself. She was forced to do so, twice. She said deputies laughed at her and told her "we'll let you out when we damn please."

38. Deputies commonly use the restraint chair in combination with the use and threatened use of other devices that present additional risks to prisoners' health, safety, and constitutional rights, such as the pepperball gun, pepper spray, and tasers.

B. Pepper Spray or OC Spray

39. Deputies at the Garfield County Jail are armed with pepper spray, also known as Oleoresin Capsicum or OC spray. It causes intensely painful burning sensation, disorientation, anxiety, and panic. It causes an involuntary closing of the eyes, mucus to run from the nose, a gagging reflex, and temporary paralysis of the larynx.

40. Pepper spray poses serious risks to prisoners' health, safety, and even their lives. It poses a risk of respiratory arrest, particularly among persons with chronic bronchitis, asthma, or respiratory infections. Use of pepper spray on agitated prisoners who are on certain medications or persons with a preexisting heart condition (such as arteriosclerosis) heightens the risk of stroke or heart attack. This is because the pepper spray reduces the body's ability to deliver oxygen to the heart, while increased agitation and/or certain medications increases the heart's demand for oxygen.

41. Pepper spray has been associated with dozens of in-custody deaths, especially when used in combination with restraints and/or electroshock weapons such as tasers. In Colorado, a prisoner in the El Paso County Jail died shortly after he was subjected to pepper spray in May, 2000. The medical examiner listed pepper spray as a contributing cause of death.

42. In the mid-1990s, the ACLU of California published an internal memorandum from one of the largest manufacturers of the OC spray that is sold to law enforcement agencies. The manufacturer's memo warned that OC spray could cause permanent nerve damage. It further explained that law enforcement officers cannot and should not rely on OC spray as a means of incapacitating resistant or non-compliant subjects. Instead, it recommended that officers rely on OC spray only to momentarily distract a subject as officers get him or her under control by other means. The memo noted that persons who are mentally disturbed and/or extremely agitated are less likely to react to the pain of pepper spray and may not become immediately compliant to officers' commands. The memo noted that law enforcement officers who mistakenly rely on OC spray to incapacitate a subject might be inclined to administer repeated doses when the first spray does not cause the desired incapacitating effect. The memo stated that "[t]his obviously would be an overexposure, which may cause added health risks" and

"raises the concern of excessive use of force." The memo warned that law enforcement should confine officers' use of pepper spray to a single one-second burst.

43. Although the Defendants have adopted a written policy concerning the use of OC spray, the short one-page document does not provide sufficient guidance to prevent deputies from using OC spray in a manner that poses unreasonable risks to prisoners' health, safety, and constitutional rights. For example, the policy fails to advise against spraying prisoners directly in the face; fails to advise deputies against using OC spray from distances closer than four feet; fails to limit the amount of OC spray or the duration or the number of bursts; fails to advise deputies of medical conditions for which the use of pepper spray is especially dangerous and contraindicated; and fails to advise deputies of any special concerns when using OC spray on prisoners who are extremely agitated and/or mentally disturbed.

44. Deputies regularly threaten to use OC spray in a manner that violates the minimal restrictions contained in the jail's written policy. For example, deputies regularly threaten to use OC spray to enforce compliance or overcome passive noncompliance with a deputy's order, in violation of the written policy that purports to limit authorization to cases where prisoners are "exhibiting violent or potentially violent behavior, threatening the security of staff, inmates, the public or the facility." Incident reports written by deputies confirm that they have also discharged pepper spray in such situations. Similarly, incident reports confirm that deputies have discharged OC spray without complying with the written policy's directive that "[e]xcept in extreme emergencies offenders will be given verbal orders to surrender before OC Spray is deployed." Such violations of the Defendants' written policy have been ratified by the Defendants and are carried out pursuant to the Defendants' informal custom and practice.

45. It is the deputies' informal custom to delay, unjustifiably, the decontamination of prisoners who have been subjected to OC spray. Indeed, deputies have pepper-sprayed prisoners and then strapped them into the restraint chair without providing them any opportunity to decontaminate, either before they are placed in the chair or while they are in the chair. The combination of the restraints and the OC spray intensifies the prisoner's pain. A prisoner who was strapped into the restraint chair after being pepper-sprayed reported that the straps of the restraint chair, in combination with the pepper spray, caused a line of blisters to develop on his skin underneath the straps. A nurse's log written while the prisoner was in the restraint chair noted "Body is Red from Pepper spray."

46. It is common practice in the jail for deputies to use and threaten to use OC spray against prisoners who are known to be asthmatic, such as Plaintiff Langley, or suffering from other preexisting medical conditions that make pepper spray especially dangerous.

47. Deputies commonly use and threaten to use OC spray in combination with the use and threatened use of other devices that pose additional risks to prisoners' health, safety, and constitutional rights, such as the restraint chair, the pepperball gun, and tasers.

C. Pepperball gun

48. The pepperball gun is similar to a paintball gun, except that it launches high-velocity pellets that explode on impact, releasing a super-irritant called PAVA, or Capsaicin II, which is chemically similar to, but more concentrated than, the irritant in pepper spray.

49. The pepperball gun has a "laser sight" that pinpoints the target. It can shoot six to twelve pellets per second at speeds up to 380 feet per second. Prisoners hit by pepperballs suffer large welts, bruises, and open bleeding wounds. When the pellets break, they release a burst of PAVA powder into the eyes, nose, and lungs. When inhaled, PAVA powder causes

acute burning of the eyes, temporary blindness, and severe inflammation the mucous membranes and upper respiratory system that in turn leads to uncontrollable coughing fits. It can prompt uncontrollable gagging, gasping or vomiting; intensely painful burning sensations; and panic. The PAVA dust itself poses risks to prisoners' health and safety that are similar to the risks of OC spray, and the manufacture specifically warns that pepperballs can precipitate asthma attacks. The pepperball gun, however, may be even more dangerous. In Boston, police killed a young woman and seriously injured several others when they fired a pepperball launcher into a crowd of Red Sox fans during the 2004 pennant celebrations.

50. The Defendants have purchased two pepperball guns, and they use and threaten to use them frequently. The incident reports obtained by Plaintiffs' attorneys after obtaining release-of-information forms from only ten prisoners document deputies firing the pepperball gun at prisoners on seven occasions in the four-month period from December, 2005, through March, 2006. The reports document numerous additional times in which deputies wielded the pepperball gun and threatened its use.

51. Deputies at the Garfield County Jail use and threaten to use the pepperball gun to inflict pain in two different ways: first, through the direct impact of the pepperball pellets striking the prisoner's body, and second, through the effects of the PAVA dust when the pepperballs burst upon impact.

52. Prisoners feel intense pain when pepperballs hit their bodies from a distance of one to ten feet. Nurses' reports document open wounds and bleeding, and prisoners have visible scars months later. Photographs of prisoners who have recently been hit with pepperballs show large, half-dollar size open welts and bruises.

53. One prisoner described the effects of the PAVA dust as follows:

> The air looks like you threw a bag of flour in the cell. Mucus is streaming from everywhere, you can't open your eyes and you're crying--its irritating your whole body. I was choking and sweating. I got lightheaded and couldn't breath and started passing out.

54. Another prisoner said:

> Snot is coming out of your nose like crazy. You can't see. It's like jalapenos in your eyes and cayenne in your lungs. Every time you exhale it stirs it up and every time you inhale it's in your lungs.

55. An asthmatic prisoner who was shot with the pepperball gun also stated:

> I was shot four (4) times with the pepperball gun. I am an asthmatic of extremely sensitive conditions. I suffered greatly, often in a fight for every breath.

56. Firing the pepperball gun at prisoners is a substantial use of force that, except in extreme emergencies, must always be preceded by a verbal warning that provides a prisoner with a reasonable opportunity to comply with deputies' orders. Nevertheless, Defendant Dawson has approved the actions of deputies who fired the pepperball gun directly at prisoners' bodies without first providing a verbal warning and a reasonable opportunity to comply.

57. Defendant Dawson has acknowledged in writing that pepperball guns will be fired at prisoners if they "threaten" staff, even, apparently, when prisoners are locked in their cells and have no ability to act on any such threats. He has also acknowledged that pepperball guns will be fired at prisoners when they "refuse to comply with orders."

58. Deputies frequently use a pepperball gun in what they call a "cell extraction," which is usually carried out by the jail's Corrections Emergency Response Team (CERT) team. The CERT team is the jail's heavily-armored, black-suited, face-helmeted equivalent of a police riot squad or SWAT team. A cell extraction might be carried out when deputies have already determined that a prisoner will be strapped into the restraint chair. The prisoner is ordered to kneel on the floor and place his hands behind his head or put his hands through the food slot to

be handcuffed. Deputies often issue such orders in an aggressive and hostile manner instead of trying seriously to talk the prisoner down and defuse the situation. When the already-agitated prisoner does not comply, then the deputies often open fire with pepperballs.

59. When deputies carry out such a cell extraction, they clearly have time to contact the medical staff in advance a) to determine whether the prisoner has asthma or another medical condition for which PAVA is especially risky or contraindicated; and b) to ensure that medical staff are present and prepared to provide immediate medical attention and decontaminate the prisoner as soon as possible. At the Garfield County Jail, however, deputies do not carry out such pre-screening, nor do they advise medical staff in advance.

60. The manufacturer of the pepperball gun instructs that, instead of shooting directly at a prisoner's body, officers should first aim at a wall, floor, or other hard surface, which will cause the pellets to break and release the PAVA dust. The manufacturer instructs that pepperball pellets should be aimed at a prisoner's body only if shooting at a wall or floor fails to achieve the desired result.

61. Despite the manufacturer's instruction, however, it is standard practice for Garfield County Jail deputies to aim the pepperball gun, as a first resort, directly at a prisoner's body. Deputies do this even when shooting the pepperball gun at very close range into prisoners' tiny cells. Even if shooting a pepperball gun into a prisoner's cell were arguably justified, shooting directly at the prisoner's body as a first resort represents a wanton, malicious, and unnecessary infliction of pain. A prisoner's tiny cell is quickly saturated with pepper dust when the pepperball gun is aimed at any hard surface. Deputies can easily achieve the same results, with less pain, physical harm, and less danger to prisoners' health and safety, by shooting pellets at hard cell surfaces rather directly at prisoners' bodies.

62. The manufacturer instructs that if officers determine that they must aim the pepperball gun directly at a person's body, it should not be aimed at the head, face, neck, or groin area. The manufacturer warns that direct hits in those areas can cause serious injury or even death.

63. Nevertheless, deputies have indeed aimed the pepperball gun at these vulnerable portions of prisoners' bodies. Indeed, one prisoner was injured earlier in 2006 when a deputy fired a pepperball gun at point-blank range and hit the prisoner in the testicles. Prisoners also report that deputies have frequently threatened to shoot them in the head with the pepperball gun. These threats are made silently, but effectively, when deputies train the laser sight of the pepperball gun directly at prisoners' foreheads. Pointing the laser sight of the pepperball gun at a prisoner's face poses a serious risk of damage if the laser beam goes into the prisoner's eyes.

64. The manufacturer states that four to ten rounds should be fired, and then the situation "should be evaluated for compliance." If the first shots do not work, then four to ten rounds can be fired once again. If two attempts do not achieve the compliance the deputies seek, the manufacturer states that the pepperball gun should be abandoned and another tactic should be employed. Deputies at the Garfield County Jail commonly violate these recommendations.

65. The manufacturer instructs that after use of the pepperball gun, a prisoner should be promptly decontaminated to remove the PAVA chemical.

66. Nevertheless, deputies commonly delay the opportunity for decontamination until long after whatever situation that prompted the use of force, whether justified or not, has clearly been brought under control. Indeed, prisoners subjected to the pepperball gun are commonly forced, unnecessarily and unjustifiably, to lay in the PAVA dust in their cells long after they

have ended whatever behavior prompted the initial resort to the pepperball gun and long after they have become compliant with deputies' orders.

67. Incident reports written by deputies commonly show that members of the CERT team will saturate a prisoner's cell with pepperballs; will then close the food chute to prevent the PAVA dust from escaping; and will then leave the cellblock area for an unspecified period of time to "suit up" before returning to the cell. Deputies have done this even after their own reports acknowledge that the prisoner has already become compliant with deputies' orders.

68. By leaving the prisoner alone and unobserved in such circumstances, in a cell saturated with PAVA dust, the deputies create an unjustifiable risk of harm to the prisoner's health and safety. In addition, they unnecessarily and unjustifiably prolong and intensify the prisoner's pain and unjustifiably delay the time when the prisoner can be decontaminated. Indeed, instead of alerting the medical staff as soon as they have shot a prisoner with pepperballs, deputies refrain from alerting the medical staff until after they have removed the prisoner from the cell, thus delaying medical attention unnecessarily and unjustifiably.

69. In addition, even after deputies have removed a prisoner from a cell contaminated with PAVA, deputies commonly strap the prisoner into a restraint chair and force the prisoner to endure the PAVA dust on his face and clothing, without any opportunity to wash off the chemical and without any other opportunity for decontamination. When pepperballs have broken the skin, prisoners strapped in the restraint chair without decontamination are forced to endure the additional agony of the PAVA dust irritating their open wounds.

70. Deputies commonly use and threaten to use the pepperball gun in combination with the use and threatened use of other devices that present additional risks to prisoners' health, safety, and constitutional rights, such as the restraint chair, pepper spray, and tasers.

D. Tasers

71. Tasers deliver a minimum 5-second 50,000-volt electric shock that causes excruciating and unbearable pain. Deputies are able to deliver more than 5 seconds of electricity simply by continuing to press the taser's trigger. As long as the trigger is depressed, the prisoner continues to be shocked.

72. The manufacturer of tasers overstates the safety of the devices in its marketing and promotions to law enforcement agencies. In recent years, more than 150 in-custody deaths have been associated with law enforcement use of the taser. In a number of cases, medical examiners have listed the taser as the cause or a contributing cause of death. In additional cases, medical examiners have concluded that they could not rule out the possibility that the taser played a role in causing the death of the deceased.

73. When the United States responded to the UN Committee Against Torture last year, it defended electroshock weapons only when used "under limited and closely regulated conditions." It also stated that in the correctional setting, medical pre-screening is required to ensure that electroshock weapons are not used against prisoners with certain medical conditions.

74. At the Garfield County Jail, however, neither tasers nor electroshock belts are used "under limited and closely regulated conditions." The Defendants have no written policy to guide detention deputies regarding the appropriate or inappropriate use of the taser or any other electroshock device.

75. The Defendants' failure to adopt a written policy regulating the use of tasers violates the standards of law enforcement and corrections professionals, who recognize that strict regulation is necessary to curb the risk of harm they pose to prisoners' health, safety and constitutional rights.

76. The International Association of Chiefs of Police, which refers to electroshock weapons such as tasers and electroshock belts as Electro-Muscular Disruption Technology (EMDT), strongly recommends that law enforcement agencies develop policies "that clearly describe the circumstances when EMDT may be used. . . . Policies should also be explicit as to when its use is inappropriate."

77. After conducting extensive research, the Police Executive Research Forum has issued a 52-point list of policy and training guidelines strongly recommending that law enforcement agencies strictly regulate the use of electroshock weapons such as tasers. They recommend that tasers be used only against persons who are "actively resisting or exhibiting active aggression, or to prevent individuals from harming themselves or others."

78. In August, 2005, Defendant Vallario invited the National Institute of Corrections (NIC) to visit the Garfield County Jail and make recommendations. The Sheriff explained that he was not experienced at running a jail. When it issued its report the following month, the NIC noted that all detention deputies carry tasers. The NIC noted that providing such high-level weapons to all deputies is very unusual. In most detention facilities, only a small specially-trained team that is trained and equipped for riot-like situations are permitted to deploy tasers.

79. Deputies at the Garfield County Jail regularly use and threaten to use tasers on prisoners in a manner that: 1) is not constrained by written policies designed to curb potential abuses; 2) departs from the standard correctional practices regarding use of force and electroshock weapons; 3) poses substantial and unjustifiable risks to prisoners' health, safety, physical integrity, and even their lives; and 4) violates prisoners' constitutional rights.

80. Deputies in the jail regularly threaten the use of tasers in cases of minor noncompliance or passive failure to obey a deputy's order. Deputies have threatened prisoners

with the taser simply for banging on the cell door to attract deputies' attention. One former prisoner wrote that guards had covered the window of his cell so that he could not see outside. He banged on the door attempting to attract the deputies' attention because he was in excruciating pain and needed medical attention. The former prisoner reports that deputies opened the food tray slot, pointed a taser at him and said, "We're not fucking with you. You will shut the fuck up and quit kicking the door or we will tase you."

81. Deputies have shocked prisoners with tasers in situations where such a substantial use of force was unjustified and violated prisoners' constitutional rights. Nevertheless, the deputies' use of tasers was carried out pursuant to the Defendants' informal policy and was ratified and approved by the Defendants.

E. Electroshock belt

82. The electroshock belt, also known as the Nova belt, is strapped around the prisoner's waist. When activated by a remote-control switch held by a deputy, the belt delivers an 8-second 50,000-volt charge through electrodes placed near the prisoner's kidneys. Several years ago, one court described the electroshock belt as follows:

> Once the belt is activated, the electro-shock cannot be shortened. It causes incapacitation in the first few seconds and severe pain during the entire period. Activation may lead to involuntary defecation and urination; immobilization may cause the victim to fall to the ground.

The court noted that the belt can cause muscular weakness for up to 45 minutes and that it had been suspected in one case of a fatal cardiac arrhythmia.

83. Although the belt is designed to be activated only when a deputy deliberately presses the remote control, accidental activations have occurred in other detention facilities.

84. Deputies frequently force prisoners to wear an electroshock belt as they walk the short distance to and from hearings in the adjoining courthouse. Deputies force prisoners to wear

the electroshock belt without making any individualized determination that a particular prisoner is likely to assault courtroom personnel or attempt to escape.

85. Deputies also make the decision to force prisoners to wear the electroshock belt during court hearings. On information and belief, no judge presiding in any courtroom in Garfield County has ordered that any prisoners wear the electroshock belt.

86. The electroshock belt is not necessary to prevent escape or to prevent assaults against court personnel. During transport to court and during non-jury hearings, prisoners are already forced to wear extremely restrictive mechanical restraints. A pair of shackles is locked around each ankle, and a short chain connects the two shackles, severely restricting prisoners' ability to walk and totally preventing them from walking quickly or running. A leather belt with a metal ring on the front is fastened around the prisoner's waist. The prisoner's hands are cuffed together with a short chain that goes through the metal ring on the waist belt, thus restricting the prisoner's ability to move hands or arms anywhere except a few inches from the prisoner's waist. When deputies force prisoners to wear the electroshock belt, it is in addition to, not a substitute for, these extremely restrictive mechanical restraints.

87. Defendants have not adopted any written policy governing the use of the electroshock belt. There are no written criteria to guide deputies about when or whether a prisoner will be required to wear the electroshock belt. Deputies do not consult with medical staff to determine whether particular prisoners have medical conditions for which the electroshock belt is contraindicated or particularly dangerous.

88. Deputies at the Garfield County Jail frequently require prisoners to sign a "notification" form. This document states that that prisoner "is being required to wear a remote activated electronic security belt system as a security precaution."

89. The form states that deputies will activate the belt "if you do not comply with the instructions of the officers." Prisoners describe being terrified at the prospect of receiving an eight-second 50,000-volt electric shock if they are perceived to be failing to follow deputies' orders. One prisoner explained, "If you step to the left when you're supposed to go to the right, you could go down."

90. The form states that the prisoner may be shocked for:

> ANY OUTBURST OR QUICK MOVEMENT
> ANY PERCEIVED HOLSTILE [sic] MOVEMENT
> ANT ATTEMPT TO TAMPER WITH THE BELT
> FAILURE TO COMPLY WITH VERBAL COMMANDS BY THE OFFICER
> ANY OVER [sic] ACT AGAINST ANY PERSON

91. Deputies claim the authority to shock a prisoner for behavior or perceived behavior that does not even come close to posing an imminent threat of assault or attempted escape. There is a substantial risk that prisoners will be shocked unjustifiably if deputies perceive a statement made in court to be an "outburst." Prisoners with mental health problems face an especially high risk that their innocent actions may be perceived by deputies, erroneously, as an "outburst" warranting a shock.

92. Wearing the electroshock belt is a nerve-wracking and terrifying experience not only while prisoners are on their way to court but in the courtroom itself. One prisoner described it like this:

> They [the deputies] hold the remote up and point it at you while you are talking and they smile. You're scared the whole time . . . You gotta stand up in front of the judge with a sober face, but in the back of your mind you're thinking I could be going down.

93. Another prisoner, who estimates that he has been forced to wear the electroshock belt over a dozen times, states:

> One time I was in the preliminary hearing, I made a movement to get my papers, and the deputy whipped out the remote and looked at me. When I was talking to the judge or my

> attorney I was frightened because I didn't know what they were going to do with that belt.

94. Another prisoner states:

> The deputies say, "You better be good while you are in court or you are in for 8 seconds of pain." . . . The deputy keeps looking over at you in court and its hard to even think.

95. Deputies actively promote fear and panic by taunting prisoners about use or potential use of the electroshock belt and playing "mind games" to inflict mental torture. Several prisoners have stated that one deputy has intentionally dropped the stun belt's remote control and then acted as though it were an accident. After picking up the remote control again, the deputy looked at the prisoners and laughed. Another deputy joked to a prisoner that "That shock belt has been having some problems, its been going off on its own." Another prisoner described a deputy who warned that with any misstep, the prisoner would "take the 8 second ride; its much tougher than a bull."

96. In early 2006, a prisoner filed a grievance about being forced to wear the electroshock belt to court. He wrote: "Please take the Nova belt off me when I go to court. I'm at your Mercy, 'Please.'" The jail's written response was that all prisoners classified as "supermax" are required to wear the electroshock belt.

97. The same prisoner filed another grievance the following month, pleading once again that the jail not force him to wear the electroshock belt. "I most likely will be having to GET ON THE STAND. Please stop putting that Nova Belt on me. I've been very GOOD." The jail responded as follows: "you are still on super max and you will have the belt on when you go to court."

98. Prisoners can be classified as "supermax" for reasons that have no connection to any supposed risk of escape or assaulting courtroom personnel. According to the Inmate

Handbook, prisoners are subject to reclassification for violations such as failing to shower at least once a day; having unauthorized amounts of items from the prison commissary; sitting on the tables in the common area; putting their feet or legs on furniture. Prisoners are regularly disciplined for such infractions as being caught with a newspaper in their cell; giving a cookie or bag of potato chips to another prisoner; or being caught with a pencil. Repeated disciplinary violations of any kind can be grounds for moving a prisoner to supermax. The Inmate Handbook emphasizes that the jail has discretion to classify or reclassify any prisoner at any time.

F. Threats and use of disproportionate force and punitive use of restraints against the named Plaintiffs

1. Defendants increase prisoners' tension and frustrations and escalate potential conflicts

99. The named Plaintiffs have been subjected to the use and threatened use of disproportionate force through the practices described above. The application of those practices to the Plaintiffs takes place in the context of additional practices of the Defendants that increase prisoners' tension and increase the potential for conflict with deputies, thus increasing substantially the risk and frequency of deputies resorting to the threatened and actual use of disproportionate force that is challenged in this First Amended Complaint.

a. Extreme restrictions and deprivations

100. Prisoners in any detention facility endure a variety of deprivations that pose the potential for frustration, tension, and conflict. In the Garfield County Jail, however, the Defendants have chosen to ensure that those deprivations are especially harsh, increasing the potential for tension and conflict. That potential is aggravated by policies that increase rather than reduce tension, escalating conflicts rather than defusing them.

101. Prisoners in the jail's general population spend the overwhelming majority of their time locked in bare and minimally-furnished cells. They have a sink and toilet but no shower. Prisoners cannot read newspapers or magazines in their cells. The only reading material permitted is three books and religious material. Unlike prisoners in the Department of Corrections, they cannot purchase televisions for their cells, nor radios, nor CD or tape players. They cannot tape a photograph of their loved ones on the wall, and face-to-face visits with family members are forbidden. They are locked in their cells for a minimum of 21 hours and 18 hours on alternating days. When they are not on lockdown, prisoners in the general population can enter a common area (the "daypod") to shower, use the telephone, watch TV, read the newspaper or exercise.

102. When the NIC evaluated the jail in August, 2005, maximum-security prisoners were confined to their cells 23 hours per day. The NIC suggested that the jail "reduce tension" by permitting additional out-of-cell time to maximum-security prisoners.

103. Defendants began allowing "max" prisoners to leave their cells for three hours a day. At the same time, however, without revising the Inmate Handbook and without distributing any written directives or explanations to prisoners, Defendants began labeling prisoners as "supermax," on the basis of unknown and unstated criteria. Instead of reducing tension, Defendants increased it as they began imposing the extraordinary restrictions described in the following paragraph.

104. Prisoners classified as "supermax" are subjected to the most onerous and isolating deprivations. Deputies cover their cell windows. Supermax prisoners cannot see into the common area and they are forbidden to speak with any other prisoners through the vents or through their cell doors. They are allowed into the common area for only 15 minutes each day,

alone. Any showers, personal phone calls, phone calls to attorneys, law library research, or catching up on the newspaper or TV news must be done during this 15 minutes. In addition, the deputies maintain that all "supermax" prisoners must wear an electroshock belt when they go to court. Shortly before this lawsuit was filed, deputies increased the isolation of supermax and max prisoners by frosting the glass of their outside cell windows. While supermax prisoners formerly could see the outside world through their small window, now they cannot see out of their cells at all. Prisoners are subject to being moved to max or supermax status at any time, whether as punishment for alleged minor disciplinary infractions or at the discretion of the deputies.

b. Arbitrary and harsh disciplinary measures

105. In the Garfield County Jail, deputies further escalate tension and conflict by presiding over a regime of arbitrary, inconsistent, unpredictable and harsh disciplinary sanctions. One prisoner spent 8 days in 24-hour lockdown for allegedly passing a piece of toast to another prisoner. Deputies regularly move prisoners to "maximum" or "supermax" status – sometimes for months at a time -- as punishment for alleged minor infractions, without providing prisoners notice of the accusations against them or any opportunity to be heard. Lesser sanctions also create tension when a prisoner believes that a deputy has responded to a minor infraction by summarily declaring that the prisoner has lost his already-minimal out-of-cell time; his phone privileges; and/or his time in the law library. Deputies who dislike particular prisoners have the power to abuse their authority with impunity by summarily imposing harsh and unfair punishments that prisoners cannot challenge and that are not effectively reviewed by supervising officers.

106. For alleged minor disciplinary infractions, deputies often summarily terminate regular meals and impose as punishment a diet of "nutraloaf." Nutraloaf is an intentionally tasteless concoction that purportedly contains all essential nutrients but leaves prisoners constipated. As explained in more detail below, in February, 2006, an angry deputy summarily punished the entire general population pod for complaining about their small food portions by announcing they would all be restricted to nutraloaf.

c. Absence of meaningful grievance procedure

107. Ordinarily, administrators in a well-managed detention facility defuse some of the tensions of prison life by maintaining a grievance system that makes prisoners feel that they have a meaningful opportunity for their legitimate complaints to be, at a minimum, at least heard and considered.

108. As this First Amended Complaint explains in more detail below, prisoners at the Garfield County Jail do not believe that they have any meaningful opportunity for their grievances to be heard or considered. The procedure published in the Inmate Handbook is not followed in practice, providing another source of tension and frustration for prisoners.

d. Failure to defuse potential conflict situations

109. It is the custom, policy, and standard operating practice of Garfield County Jail deputies to respond to breaches of jail discipline –even minor infractions and minor disruptions-- with threatened and actual use of disproportionate and excessive force.

110. Deputies routinely resort to threats and use of disproportionate force when they believe prisoners may fail to comply with a deputy's order, including the most minor cases of passive noncompliance where prisoners are not posing any threat to persons or property.

111. It is standard practice among corrections professionals to attempt to defuse and de-escalate potential conflict situations by talking prisoners down when they are agitated and on the verge of resistance. Instead, deputies in the Garfield County Jail often taunt prisoners in a manner calculated to escalate conflict, tension, and hostilities.

112. In many cases, the prisoners who are the targets of such taunting and the targets of threatened and actual disproportionate force are prisoners with serious mental health problems that the jail has neglected or addressed inadequately. Deputies often respond inappropriately to such prisoners in a manner that escalates conflicts and increases the likelihood of threats and use of excessive force. Deputies often choose to interpret behaviors that are symptoms of the prisoners' mental health problems as though the prisoners were deliberately defiant and disobedient. Deputies often respond with harsh disciplinary measures to behaviors that are manifestations of prisoners' medical, mental health and/or psychiatric problems.

113. Deputies compound the problem by taunting prisoners and egging them on, and by threatening the use of excessive and disproportionate force through the frequent display and abusive use of such devices as tasers, the pepperball gun, pepper spray, and the abusive and overly-frequent use of the restraint chair.

114. For example, one former prisoner with serious mental health needs described an incident that began when the nurse did not give him his psychiatric medications. He requested them over the intercom that allows him to communicate from his cell to deputies in the jail's control room. The deputies responded by ridiculing him for needing what they called "psycho-pills," and they contemptuously dismissed the prisoner by stating "you are a joke." When the prisoner kept asking for his medication, the deputies turned off the intercom. When the prisoner began banging on his cell door to get the deputies' attention, the situation escalated. The jail's

CERT team responded in force. Eventually deputies shot multiple pepperballs at the prisoner and then strapped him into a restraint chair. Reflecting on the situation later, the prisoner stated "with these psychotropics I take, they [the deputies] knew it, they should have been more professional, they should have talked me down."

115. Deputies sometimes state that they provided a verbal warning and opportunity to comply before resorting to overwhelming physical force. But those warnings are routinely delivered in the form of aggressive ultimatums. They do not function as a reasonable or serious effort to calm a prisoner's agitation, defuse the situation, or otherwise avoid the use of force.

116. The practices described above, in combination with the supervisory acts and omissions and use-of-force practices challenged in this First Amended Complaint, increase substantially the risk and frequency that deputies will wind up resorting to the threatened and actual use of force that has violated Plaintiffs' rights in the past and threatens to continue doing so in the future.

2. Plaintiff Clarence Vandehey

a. The jail's failure to provide requested mental health care

117. Clarence Vandehey arrived at the Garfield County Jail in September, 2005, where he remained until mid-December, 2005, when his charges were resolved and he was released. The next day, Mr. Vandehey was arrested and brought to the jail once again. He was not charged for any alleged misconduct during his 30 hours of freedom. Instead, the allegation is based on an incident that allegedly took place in the jail in November, 2005. He remains in the Defendants' custody while that charge is pending.

118. Mr. Vandehey has had serious mental health problems since he was a child. One manifestation of his mental health problems is a low tolerance for frustration and a low threshold

for anger that can erupt in episodes where he loses control and lacks judgment about what he is doing.

119. These childhood mental health problems ended his schooling after sixth grade. He spent most of seventh grade in the counselor's office, and he was eventually expelled from school that year. The same mental health problems have interfered with his ability to maintain steady employment, and he has spent much of his adult life homeless and unemployed.

120. Mr. Vandehey recognizes his mental health problems, and he also acknowledges that it is easy for his interaction with jail authorities to wind up "pushing his buttons."

121. The policies and practices of the Garfield County Jail substantially increase the risk that Mr. Vandehey's interaction with jail staff will result in "pushing his buttons." These practices include the jail's refusal to provide mental health care to indigent prisoners unless they are hallucinating or suicidal; the practices described in paragraphs 99-116 of this First Amended Complaint; and the deputies' frequent use and threatened use of excessive force that amounts to summary corporal punishment, including, but not limited to, the punitive use of the restraint chair, and the use and threatened us of pepperball guns, pepper spray, tasers, and the electroshock belt.

122. Soon after he arrived at the jail, Mr. Vandehey filed a kite asking to speak with a mental health professional. He indicated that he had had mental health problems his entire life. The jail refused. The nurse's response stated that "Mental Health consults costs $90 which you do not have @ this time."

123. In most cases, prisoners without sufficient money in their accounts for medical co-pays or other medical charges are not denied care; the jail simply carries a negative balance

on the prisoner's account. As a matter of policy, however, the Defendants restrict the ability of indigent prisoners to receive mental health care.

124. On information and belief, neither the jail's nurses nor the jail's on-call physician are specially trained in psychiatry. Nevertheless, pursuant to the Defendants' policies, the medical staff are the gatekeepers who determine whether a prisoner's mental health problems are sufficiently serious to warrant referring an indigent prisoner to a psychiatrist or other mental health professionals.

125. Mr. Vandehey's criminal defense attorney telephoned the jail. She stated that her client had recently received an evaluation from an outside mental health professional that indicated a need for mental health care. She requested that the jail provide her client with access to that mental health assistance. According to a notation in Mr. Vandehey's medical file, the attorney was told that the jail does not provide mental health services; it provides only crisis intervention. The jail's medical staff said that Mr. Vandehey could not see a mental health professional because he was not in a crisis where he was hallucinating or suicidal. The jail's medical staff inappropriately dismissed Mr. Vandehey's mental health problems as a simple issue of "anger control."

126. Relying on the evaluation he received from an outside mental health professional, Mr. Vandehey submitted yet another request for assistance. He explained that his condition is "savierly [sic] efecting [sic] my life. I am a danger to myself and others around me because my depression and paranoia. I can hear people think leads to uncontrollable explosive anger." The kite stated that he had had the problem his entire life and had previously received treatment at a mental health facility in Oregon.

127. Mr. Vandehey has never succeeded in obtaining a meeting or an evaluation with any of the jail's mental health providers. In a letter to ACLU attorneys, Mr. Vandehey wrote:

> "I a prisoner with only a 6th grade edgucation [sic] am forced to seek out books and try to provide treatment for my self [sic]. I am so overwhelmed."

b. Disproportionate force and restraints

128. During the course of Mr. Vandehey's time in the Garfield County Jail, he has been the subject of numerous incident reports written by Garfield County deputies. He has been strapped into the restraint chair 7 different times. On several occasions, deputies unjustifiably and unnecessarily strapped Mr. Vandehey in a particularly painful position. He has been shot with the pepperball gun on two occasions before being strapped into the restraint chair. In both cases, he was provided no opportunity to decontaminate until after he was released from the restraint chair. Deputies have taunted Mr. Vandehey and threatened him with the use of tasers, pepper spray, and additional shots from the pepperball gun, in some cases while he was already immobilized in the restraint chair. He has been forced to wear the electroshock belt many times.

129. Mr. Vandehey has been strapped into the restraint chair as a punitive measure rather than as a means to prevent harm. He has been confined in the restraint chair when such a drastic measure was not necessary to protect himself or others and when deputies did not bother attempting less drastic means of restraint. Deputies have taunted him while he was restrained, and he has sustained physical injuries. Even in cases in which a deputy's report presents facts attempting to show that the initial restraint was justified, deputies have forced Mr. Vandehey remain in the restraint chair long after any such justification or necessity had passed. He has been placed in the restraint chair without appropriate medical involvement and monitoring and without periodic 15-minute checks.

130. Incident reports regarding the restraint of Mr. Vandehey contain obvious red flags that demonstrate the fact that restraints are being used improperly and in a manner that poses a substantial risk of harm to prisoners' health and safety and constitutional rights. Of the seven times Mr. Vandehey has been in the restraint chair, the deputies' reports on four occasions fail to reveal how long Mr. Vandehey was restrained, though in one case it was clearly more than six and one-half hours. The reports acknowledge restraining Mr. Vandehey with his hands handcuffed behind his back and sometimes report his regular complaints of extreme pain. The reports fail to document regular checks by either medical or security staff and fail to document appropriate medical involvement. They fail to provide facts documenting that restraint was justified at its inception and only for as long as necessary to prevent imminent physicial harm to persons or to prevent imminent substantial harm to property. When Mr. Vandehey was shot with pepperballs before being strapped into the restraint chair, the reports confirm that deputies unjustifiably delayed any opportunity for decontamination.

131. In one case, deputies said they decided to take Mr. Vandehey out of his cell and strap him into the restraint chair "for his own safety." A deputy's report states that Mr. Vandehey was ordered to lie face down, and when he allegedly did not do so, the deputies opened fire with the pepperball gun. The report states "After multiple rounds, Inmate Vandehey stated, 'I give up' and layed [sic] face down on the floor." A second deputy's report notes Mr. Vandehey's compliance with the order to lay down and also states that additional rounds were fired at that time to "saturate" the cell with pepper dust.

132. Instead of taking Mr. Vandehey out of the cell at that time, however, the second deputy reports that the deputies left the scene and "went to the CERT room to dress out in our CERT gear." The report of the first deputy indicates that the deputies waited an additional 12

minutes before returning to get Mr. Vandehey out of the PAVA-filled cell and into a restraint chair. During this time, Mr. Vandehey's skin was burning, his eyes were watering, and his lungs were burning. He was in intense pain. The deputies' reports do not indicate that the medical staff was called until after Mr. Vandehey was put into the restraint chair. Nor do the deputies' reports indicate how long Mr. Vandehey was forced to spend in the restraint chair while covered with pepper dust. The nurse's notes show that Mr. Vandehey's wrist was bleeding; that he had 11 abrasions the size of half dollars that were described as "very red, skin broken," as well as a "large red area" on Mr. Vandehey's abdomen. The nurse also noted that there were additional wounds on Mr. Vandehey's extremities that needed assessment but that such assessment would have to wait until he was released from the restraint chair.

133. On another occasion, Mr. Vandehey spent most 5 hours in the restraint chair as punishment for disobeying a deputy's order to stop banging on the cell door.

134. On another occasion, deputies strapped Mr. Vandehey into the chair with his hands handcuffed behind his back. They wheeled him into his cell, with the back of the chair against his cell door, and they attached the handcuffs to the outside handle of the cell door with additional restraints strung through the hole in the back of the chair and through the food chute of the cell door.

135. While Mr. Vandehey was fully restrained in this extremely painful position, a deputy placed a taser against his shoulder and told him to "stop moving." The deputy said that he had tasered prisoners in the restraint chair in the past and he indicated he was prepared to do so again.

136. Mr. Vandehey cried out multiple times that the restraints were extremely painful, were too tight, and were making his hands turn cold. He had welts on his shoulders after the

several-hour ordeal. None of the deputies' incident reports reveal how long Mr. Vandehey was immobilized in the restraint chair.

137. Mr. Vandehey filed a grievance several days later describing this incident:

> "On the 21st of this month I was placed in the restraint chair shackled to the restraint chair, double cuffed in such a matter that my shoulders where [sic] in so much pain my bodie [sic] was shaking and curving out. Also my hands where [sic] cuffed so tight that they where [sic] ice cold and I could not bend my fingers. Wy [sic] is it that I need so much more restraints that the 7 the chair has?"

138. The next day, Mr. Vandehey was subjected to both the pepperball gun and the restraint chair. The jail's CERT team came to Mr. Vandehey's cell and ordered him to kneel down and put his hands behind his head. Mr. Vandehey was complying and on his way to the ground when the deputies opened fire and shot him with pepperballs. A grievance filed the next day states "I was on my knees with my hands on my head when I was shot with the high powered air rifle…What order was I given that I did not comply with that justafies [sic] being shot?"

139. After Mr. Vandehey was shot and had complied with new orders to lie on the floor, the incident reports state that the deputies closed the cell's food chute door to "allow time for the chemical agents to take effect." One report documents that Mr. Vandehey was forced to lie in the PAVA dust in his cell for 14 minutes before deputies returned. When they returned, they took Mr. Vandehey directly to the restraint chair, strapped him in with his hands still handcuffed behind his back, and did not provide any opportunity for decontamination. The deputy's report confirms that Mr. Vandehey spent an additional one and one-half hours in this painful position in the restraint chair before he was finally allowed a shower to decontaminate.

3. Plaintiff William Langley

a. The jail's failure to provide requested mental health care

140. Plaintiff William Langley has suffered from serious mental health problems since he was a child. Upon his arrival to the Garfield County Jail in October of 2005, medical staff noted that he had a long history of a serious bipolar disorder and had previously been prescribed a series of psychotropic medications. They also noted that Mr. Langley had asthma.

141. From the beginning of his stay in the Garfield County Jail, Mr. Langley has repeatedly, but unsuccessfully, pleaded for an appointment with a psychiatrist who could evaluate his psychiatric disorders and stabilize him on his psychiatric medications.

142. Mr. Langley has filed at least ten grievances and medical kites requesting to see a psychiatrist. For example, one grievance stated "I have had an extensive history with pychiatric [sic] care. I am by polar [sic] manic depressent [sic] with sychaphrenia [sic]. I took multiple meds for this over the years and have seen many therapists. I need one now please before I get worse."

143. The jail responded that any appointment with a psychiatrist would cost $90 per hour. Mr. Langley had no money, and because the jail refused to debit his inmate account, he could not see a psychiatrist.

144. In additional grievances, Mr. Langley linked his mental health issues to his frequent disciplinary problems in the jail:

> "I am bi-polar manic depressant w/ psychziphrania [sic] I need this Dr. I'm feeling like I'm about to come unwound. Please! I'm tired of getting in trouble. I'm begging don't let this happen to me. Please."

145. Mr. Langley wrote another kite complaining that the Inmate Handbook "says I won't be denied because I'm poor." The jail responded that he couldn't see a psychiatrist without a referral from "the facility doctor," which Mr. Langley did not have and never received.

146. Mr. Langley persisted in filing additional grievances requesting access to psychiatric care. In response, the jail told Mr. Langley that the jail staff would "accept no more kites on this issue" and that "[a]ny more kites on this issue would be considered abuse of the KITE system." The Inmate Handbook lists "abuse of the kite system" as a "major" disciplinary infraction.

147. The jail's on-call physician authorized certain psychiatric medications for Mr. Langley, but the jail provided no monitoring by a psychiatrist or, on information and belief, any other medical professional with psychiatric training. Mr. Langley filed numerous grievances requesting changes in his psychiatric medications.

148. For months, jail authorities knew that Mr. Langley was complaining that the type and dosage of his psychiatric medication needed to be adjusted. For example, one grievance said, "I need to get this under control-PLEASE assign me morning meds;" "I have experienced headaches, irritability, frustration & anger;" "I am in constant emotional changes. I am snapping angrily at people. I am frustrated & edgy all the time."

149. Mr. Langley has never been able to obtain psychiatric care while in the Garfield County Jail. The failure to attend effectively to Mr. Langley's mental health problems has contributed to tension and conflict that has escalated on multiple occasions to disciplinary sanctions, including long sentences to a diet of "nutraloaf"; months-long "sentences" to supermax status; and the threats and use of force and punitive use of restraints challenged in this lawsuit.

b. Disproportionate force and restraints

150. Mr. Langley has been strapped into the restraint chair at least five times. He has been strapped into the restraint chair as a punitive measure rather than as a means to prevent

imminent harm. He has been strapped into the restraint chair when such a drastic measure was not necessary to protect himself or others and when deputies did not bother to attempt less drastic means of restraint. Although in several cases the incident reports fail to reveal how long Mr. Langley was restrained, he has been forced to spend over four hours in the chair. Deputies have taunted him while he was restrained, and he has sustained physical injuries. Even in cases in which a deputy's report presents facts attempting to show that the initial restraint was justified, Mr. Langley has been forced to remain in the restraint chair long after any such justification or necessity had passed. He has been placed in the restraint chair without appropriate medical involvement and monitoring and without periodic 15-minute checks.

151. Mr. Langley has also been threatened on numerous occasions with the use of unjustifiable and excessive force in the form of tasers, pepper spray, and the pepperball gun, which has been aimed directly at his head. He has been forced to wear the electroshock belt on multiple occasions.

152. On at least one occasion, Mr. Langley had an asthma attack while strapped in the chair. A nurse gave him some whiffs from an inhaler while deputies kept him strapped into the chair. Another time, when Mr. Langley needed to urinate, deputies refused to release him from the chair. Instead, they wheeled the restraint chair to a toilet. They undid all the straps except the ones binding Mr. Langley's feet to the chair. Mr. Langley was then ordered to stand up and urinate while a deputy watched and while Mr. Langley was still physically bound to the restraint chair. Then the deputies strapped Mr. Langley back into the restraint chair.

3. Plaintiff Samuel Lincoln

153. Plaintiff Samuel Lincoln arrived at the Garfield County Jail as a pretrial detainee at the end of December, 2005. He immediately submitted a medical kite asking to speak with a

"mental doctor." Although Mr. Lincoln was never permitted to speak with a psychiatrist or other mental health professional, the jail's records show that the on-call physician authorized giving Mr. Lincoln a powerful anti-psychotic drug, Thorazine, for paranoia and hallucinations. In mid-January, the dose of Thorazine was doubled.

154. Mr. Lincoln was in the custody of the Garfield County Sheriff continuously until the end of March, 2006. During that time, Mr. Lincoln was subjected to the policies and practices described in this First Amended Complaint. After his transfer to the Mesa County Jail, he has returned to the custody of the Garfield County Sheriff on several occasions for court appearances on his still-pending charges in Garfield County. During his return trips, he has once again been subject to the polices and practices of the Garfield County Sheriff's Department.

155. Mr. Lincoln has been subjected to the pepperball gun, the restraint chair, and has been forced to wear the jail's electroshock belt. He has also been threatened with use of tasers and pepper spray.

156. On January 21, 2006, when housed in the cell next to Mr. Vandehey, Mr. Lincoln heard and saw part of the scene when the deputies strapped Mr. Vandehey painfully in the restraint chair with his hands handcuffed behind his back. Mr. Lincoln began to protest vociferously, yelling and pounding on the cell door to get the deputies' attention. The jail deputies told Mr. Lincoln that if he did not shut up, they would use force on him. He declined to shut up, and deputies responded with the pepperball gun.

157. Mr. Lincoln tied a towel around his head to protect himself, and he hid behind a plastic chair to shield his face from the pepperball pellets. One deputy's report said that 7 pepperball rounds were fired at the ceiling "to saturate the room." The pepperball gun was passed to a second deputy who reportedly "had a better angle." The second deputy then reported

firing an additional 6 pepperball rounds at the floor just in front of Mr. Lincoln, "spraying the OC powder into Inmate Lincoln's face." A different deputy reported that the second barrage totaled 10 pepper pellets.

158. According to the reports, all of the deputies then left the area to obtain their CERT team equipment and "suit up" in their riot-squad gear and to "allow time for the chemical agents to take effect." During this time, Mr. Lincoln was left unattended in a cell saturated with pepper dust. The jail's records indicate that the deputies did not return until fourteen minutes later. At that time, Mr. Lincoln was unresponsive and close to passing out. One report states that Mr. Lincoln was lying on his back. The deputies ordered Mr. Lincoln to turn over and lie face down in the pepper dust. When Mr. Lincoln did not immediately move to comply, the deputies reportedly fired the pepperball gun again, launching "2-3 rounds into the wall beside him."

159. Mr. Lincoln rolled over, as ordered, and the deputies came into the cell and applied handcuffs and leg shackles. Mr. Lincoln remembers that at one point, the officer in charge told the deputies to wait and "make him lay in it" before taking Mr. Lincoln out of the cell.

160. When Mr. Lincoln was finally removed from his cell, handcuffed behind his back and legs shackled, the deputies reported that he was "very limp and unresponsive." Deputies reported that he "was having difficulty breathing." One report states that Mr. Lincoln finally "took a big gasp of air and asked 'what is going on? Who are you guys?'"

161. Instead of calling the medical staff at the time they first fired the pepperballs, the deputies waited until they had removed Mr. Lincoln from his cell. The nurse did not arrive until 22 minutes after the first pepperballs were fired, and the equipment to check Mr. Lincoln's vital

signs did not arrive for an additional five minutes. When the nurse finally arrived, she noted that Mr. Lincoln's physical distress was the result of "suffering from the pepper ball chemicals."

162. In early March, 2006, deputies accused Mr. Lincoln of stuffing up his toilet and flushing it repeatedly to cause water to flood onto the floor. Although Mr. Lincoln denied the accusation, deputies strapped Mr. Lincoln into the restraint chair as punishment. They did so in a particularly painful manner, handcuffing Mr. Lincoln's hands behind his back instead of strapping them to the chair's arm rests. The incident reports clearly show the deputies' punitive intent. One states that Mr. Lincoln was strapped into the chair "because he had flooded his cell." Another states that "it was determined that Inmate Lincoln would be placed in the restraint chair for his actions." It was not until several hours later that deputies finally responded to Mr. Lincoln's complaints of pain by uncuffing his hands and strapping them to the chair's arm rests.

163. When Mr. Lincoln was finally released from the restraint chair after three and one-half hours, a deputy allowed Mr. Lincoln to return to his cell but refused to return his mattress, sheets, or blankets. Mr. Lincoln pointed out that the Inmate Handbook states that bedding can never be taken from a prisoner as a disciplinary measure. The deputy responded that he "didn't give a shit" what it said in the Inmate Handbook.

164. On June 15, 2006, Mr. Lincoln returned to the jail for a preliminary hearing that was scheduled for the following day in his pending case in Garfield County. He was immediately assigned to supermax status and taken to the maximum-security pod on the third floor of the jail. After he violated "supermax" rules by exchanging communications with other prisoners who informed him how he could obtain an interview with ACLU attorneys who were present at the jail that day, Mr. Lincoln was moved to an isolation cell on a different floor.

4. Plaintiff Jared Hogue

165. In February, 2006, Plaintiff Jared Hogue and other prisoners in the jail's general population section became the target of a massive use of excessive and disproportionate force, including spraying prisoners with pepper spray, shooting them with multiple rounds from pepperball guns, and discharging tasers. None of the prisoners had posed any threat of violence or physical resistance.

166. The incident began when prisoners' complaints about overly-small portions of food prompted them to make a statement. They did not believe that the jail's grievance procedure provided any meaningful opportunity to be heard. Instead, on February 19, 2006, nearly all the prisoners in the general population section of the jail declined to come out of their cells for breakfast.

167. A deputy with the rank of corporal eventually brought the prisoners out of their cells to discuss the situation. The prisoners explained some of their concerns, and the corporal said she could not do anything about them. She stated that if the prisoners wanted to discuss it further, they would have to speak with the sergeant. She said "if you can be good, you can wait for him to get here."

168. Suddenly, the corporal changed her mind. She ordered "total lockdown" and declared "nutraloaf permanently" for the entire general population of the jail.

169. Not all the prisoners moved immediately to their cells, and the jail's CERT team then burst into the pod wielding pepperball guns, tasers, and pepper spray. The deputies began issuing conflicting orders, such as "don't move!" and "lock down!" and "get on the floor, now!" One deputy threatened that any prisoner who moved would be tased, while other deputies

ordered prisoners to lay on the floor or to go to their cells. The prisoners could not comply with the conflicting orders.

170. Deputies approached one prisoner and yelled at him alternately "not to move" and to "get on the floor." When the prisoner stayed motionless, not knowing which order to obey, a deputy unleashed a long burst of pepper spray into the prisoner's face.

171. A prisoner seated at a daypod table saw the laser beam of a pepperball gun pointed at the table. He put his face down on the table and tried to cover his head. Without giving the prisoner a clear order or attempting to escort him to his cell, deputies immediately resorted to overwhelming force. One deputy discharged OC spray on the prisoner's arms and head from a distance of only a few inches (after attempting unsuccessfully to reach under the prisoner's arms and spray him directly in the face). Another deputy opened fire with the pepperball gun, shooting at least 14 direct hits, while the first deputy sprayed the prisoner again with the OC spray until it appeared that deputy's canister was empty.

172. Another prisoner had begun walking to his cell to comply with the order to lock down when the CERT team burst into the pod. When the CERT deputies ordered prisoners to hit the floor, he did so, and he was lying on his stomach half-in and half-out of his cell. Deputies grabbed the prisoner's legs and began dragging him out of his cell as he laid face-down on the floor. Although he was not resisting and was not posing any threat, deputies discharged a taser into the prisoner's back. As Mr. Hogue wrote in a grievance he filed, the prisoner "was pulled from his cell…on his belly and tazed for no reason."

173. Although Mr. Hogue and other prisoners were exposed to PAVA dust and pepper spray, they were locked down and denied showers for several days. In response to grievances Mr. Hogue filed over the deputies' disproportionate response, Mr. Hogue was told that the

deputies' use and threatened use of force was justified. Mr. Hogue was told that all prisoners on the general population pod had failed to comply with orders.

174. Mr. Hogue has been forced to wear the electroshock belt to court, and he is at risk of being forced to wear it again in the future.

G. Supervisory Liability

175. All of the foregoing acts and omissions of Garfield County Jail deputies were carried out pursuant to the informal policies, customs, and practices of the Defendants and the Garfield County Sheriff's Department. In the alternative and in combination, Defendants have been and remain deliberately indifferent to the risk that their deputies will violates prisoners' constitutional rights.

1. Absence of written policies

176. The potential abuse of restraints chairs, electroshock devices, and pepperball guns poses a serious and obvious risk to prisoners' health and safety and a risk that their constitutional rights will be violated. Law enforcement authorities typically attempt to address the potential risks of such devices by drafting written policies designed to mitigate the potential for abuse and mitigate the potential risk to health and safety.

177. In this case, however, Defendants have failed to adopt written policies to regulate the detention deputies' use of force on prisoners.

178. On June 14-16, 2006, attorneys for the Plaintiffs reviewed various jail documents at the Defendants' office. They reviewed what the Defendants represented to be the complete policy and procedure manual for the Detention Division of the Garfield County Jail.

179. At that time, the Defendants had no written policy for the Detention Division regarding the continuum of permissible force that deputies can use on prisoners. In addition,

they had no written policy for the Detention Division that regulates the use of the restraint chair; the use of the pepperball gun; the use of the electroshock belt, or the use of tasers.

180. The absence of written policies represents a deliberate and conscious choice on the part of the Defendants.

181. Defendant Vallario was elected Sheriff in November, 2002, and took office in January, 2003. Before formally taking office, Defendant Vallario notified the civilian jail administrator and the highest-ranking deputy in charge of the detention division that they would no longer be employed at the jail. The two discharged employees together had a total of 35 years experience in jail administration.

182. Defendant Vallario appointed an undersheriff and assigned him the task of administering the jail. One day after beginning work in January, 2003, the new undersheriff resigned. Subsequently, Defendant Vallario promoted Defendant Dawson from his former rank of sergeant to his current position as Commander and administrator of the jail. Dawson had little or no experience in jail administration.

183. Until Sheriff Vallario took office, the Detention Division was regulated by written policies that established a continuum of force. A written policy governed the use of the restraint chair. On information and belief, Defendants deliberately chose to discard the written policies adopted by the previous jail administrators.

184. When the NIC presented a brief written evaluation of the jail in 2005, it stated the Detention Division lacked sufficient written guidance in the form of written policies and procedures. It strongly advised that the Sheriff draft a comprehensive policy and procedure manual. At the time, the Sheriff's policy and procedure manual contained only 11 policies applicable to the Detention Division, none of which addressed the use of force in general or the

use of the restraint chair, pepperball gun, tasers, or the electroshock belt specifically. As of June 16, 2006, when Plaintiffs' attorneys reviewed what the Defendant represented to be the complete policy and procedure manual, no additional written policies had been adopted.

2. Failure to ensure adequate training

185. The Defendants have failed to ensure that deputies at the Garfield County Jail are adequately trained in the use of force in general and in the safe and appropriate use of such devices as the restraint chair, the pepperball gun, pepper spray, tasers, and the electroshock belt.

186. The lack of adequate training is manifested in part by the absence of written policies. It is further manifested by the informal custom and policy of using the restraint chair, pepper spray, the pepperball gun, tasers, and the electroshock belt in a manner that poses an unjustifiable risk of substantial harm to prisoners' health and safety; violates widely-accepted correctional standards; violates the recommendations or instructions of the manufacturers or venders regarding the proper and safe use of the devices; and/or violates prisoners' constitutional rights.

187. The lack of adequate training is further manifested by the Defendants' failure to maintain any documentary materials that describe or memorialize the content of any training sessions or training curricula regarding the safe and appropriate use of the pepperball gun or pepper spray. In a request made under the Colorado open records laws, attorneys for Plaintiffs asked to inspect all training materials regarding use of pepper spray or the pepperball gun, including any materials provided by the manufacturer or vender. In a written response dated June 14, 2006, the Defendants' responded that the Sheriff's Department had no responsive documentary materials.

188. On information and belief, the Defendants' only training materials relating to the safe and appropriate use of tasers is a CD supplied by the manufacturer, Taser International, Inc. Those training materials contain misleading information that erroneously overstate the purported safety of tasers and erroneously encourage law enforcement officers to use them in situations in which such a substantial use of force is disproportionate, excessive, poses unreasonable risks to prisoners' health and safety, and violates constitutional rights. The Police Executive Research Forum has recommended that law enforcement agencies ensure that they do not rely solely on the training materials supplied by the manufacturer of electroshock weapons.

189. Defendants are aware of the need for adequate training in the use of force in general and the safe and appropriate use of the pepperball gun, pepper spray, the restraint chair, tasers, and the electroshock belt. There is an obvious risk that inadequate training poses a substantial risk to prisoners' health and safety and a substantial risk that prisoners' constitutional rights will be violated. Nevertheless, Defendants have deliberately disregarded that risk.

190. The Defendants' failure to ensure adequate training has caused and threatens to cause violations of the constitutional rights of the named Plaintiffs and other members of the Plaintiff class.

3. Failure to supervise and monitor deputies and control abuses

191. The Defendants have failed to implement and maintain systems to supervise and monitor their deputies in a manner that will detect and minimize improper use of force and violations of prisoners' constitutional rights. Those failures include, but are not limited to, the following:

192. Deputies write narrative incident reports to document the use of force and the reasons why force was applied. These forms include check-off boxes to indicate review by

supervising officers all the way up the chain of command. The incident reports provided to Plaintiffs' attorneys fail to indicate that supervisory officers reviewed and approved the reports. The check-off boxes are not checked.

193. The narrative descriptions in many of the incident reports fail to provide sufficient detail for a supervisory officer to determine whether the use of force was appropriate. Defendants have failed to require that deputies draft use-of-force reports that contain sufficient detail.

194. Despite the deficiencies in the narrative reports, many contain sufficient details to serve as glaring red flags to any reasonable supervisor who is concerned about curbing inappropriate uses of force that are excessive and disproportionate; violate standard correctional practices; violate the (rare) written policies governing the Detention Division; pose an unreasonable risk of harm to the health safety and lives of prisoners; and/or violate or pose an unjustifiable risk of violating prisoners' constitutional rights. Nevertheless, the Defendants have not established procedures that effectively detect and act on reports that contain such red flags. On the contrary, the incident reports reflect deputies' acting pursuant to and consistent with the standard operating procedure of the Garfield County Jail and the informal policies of the Defendants. Alternatively, Defendants are deliberately indifferent to the risk that their failure to effectively monitor and supervise has caused and threatens to continue causing violations of prisoners' constitutional rights.

VI. DENIAL OF ADEQUATE MENTAL HEALTH CARE TO INDIGENT PRISONERS

195. Pursuant to the practice and policy of the Defendants, indigent prisoners with serious mental health needs are regularly denied their right to appropriate mental health care delivered by qualified mental health professionals.

196. The Defendants have contracted with Correctional Healthcare Management (CHM) to provide for medical care, dental care, and prescription drugs for prisoners, but the contract excludes mental health services.

197. The Defendants have a separate contract with Colorado West Regional Mental Health Center ("Colorado West") to provide mental health services to prisoners at the jail.

198. Nevertheless, the Defendants have delegated to CHM staff the role of gatekeeper to determine whether indigent prisoners with serious mental health needs will be able to see a psychiatrist or other qualified and appropriately-trained mental health professional. Thus, an indigent prisoner cannot obtain care from any mental health professionals at Colorado West unless the CHM staff determines that it is necessary.

199. When prisoners request mental health care, they are advised that they can see a mental health professional from Colorado West only if they can pay $100 and have the funds in their inmate accounts. Unlike medical care, the jail refuses to allow prisoners to run a negative balance in their accounts to pay for mental health services.

200. CHM provides a nursing staff and an on-call physician, who visits the jail periodically. The nursing staff determines which prisoners will see the on-call physician. On information and belief, neither the nursing staff nor the on-call physician are specially trained in psychiatry or mental health care.

201. Mr. Langley has been on suicide watch five times since he has been to the Garfield County Jail. He has been in the restraint chair five times. Mr. Vandehey has been in the restraint chair seven times. Mr. Langley, Mr. Vandehey, and other jail prisoners have repeatedly requested mental health care for their serious mental health needs. They have

repeatedly been refused because they do not have enough money in their jail account to pay for an appointment with a qualified mental health professional.

202. The medical staff told Mr. Vandehey's criminal defense attorney that mental health professionals will be called to see indigent jail prisoners only for crisis intervention, which the staff defined as occasions when a prisoner is suicidal or hallucinating.

203. Even when a prisoner is hallucinating, however, the jail's on-call physician has refused to allow the prisoner to see a psychiatrist or other qualified mental health professional.

204. For example, among Mr. Vandehey's multiple requests for mental health care are several kites that report that he hears voices and can hear other people's thoughts. In a request dated June 12, 2006, he wrote:

> It is getting close to court and as always when my stress level gets high the voices (other peoples thoughts) get louder and harder to controll wich [sic] makes me verry adjitated wich [sic] in turn causes me to loose amotional controll [sic] as I have told you in the past on severial ocaisions[sic]. . . . I have not slept for 2 nights and have been moved out of med. Pod because I am gona loose controll [sic].

205. The jail's physician declined to approve Mr. Vandehey seeing a psychiatrist or any other mental health professional. The physician's notes do not mention or memorialize any inquiry into the auditory hallucinations Mr. Vandehey reported.

206. When a prisoner's statements or a prisoner's actions prompt jail authorities to place a prisoner on suicide watch, the medical staff call a crisis intervention counselor from Colorado West. The counselor, however, who is not a psychiatrist or psychologist, simply assesses whether the prisoner should remain on suicide watch. The counselor provides no counseling, no therapy, and no mental health care. On one occasion when Mr. Langley was placed on suicide watch, the counselor's notes indicate that the medical staff "cautions that we need to focus on need for crisis intervention, not therapy session."

207. In some cases, the jail's on-call physician approves psychiatric medications for a prisoner's mental health needs. Pursuant to the policies of the Defendants, however, the physician is limited to prescribing medications on a list supplied by CHM. Thus, prisoners with a history of successful adjustment to medications prescribed by previous doctors often cannot obtain those medications even when the jail's on-call physician acknowledges the need. In such cases, the physician's prescription choice is influenced inappropriately by nonmedical factors.

208. For example, the jail physician acknowledged one prisoner's prior diagnoses that included bipolar disorder. The physician's notes state that the prisoner reported having taken various medications that produced adverse reactions, but he had done well when taking Seroquel, a drug that is prescribed for persons suffering from bipolar disorder. The jail's doctor, however, ruled out Seroquel because it is not on the jail's formulary. His notes state: "Tegretol is the only unrestricted remaining choice on formulary which is used for mania." The doctor prescribed Tegretol.

209. The prisoner, who had previously been treated for his psychiatric problems at Colorado West, subsequently requested to speak with a psychiatrist or other mental health professional:

> I need to speak to some one from Colorado West Mental Health Service. I've spoken to the jail doctor and he can not or doesn't understand what is happening. This doctor has put me on medication doesn't work [sic] with my body and mind. This is why I need to speak to some one that can prescribed psychotropics, a psychologist!!!

The prisoner submitted additional medical requests reporting that his mind would not stop racing and that he needed changes in his medications or additional psychiatric help. The prisoner never got to see a psychiatrist or other qualified mental health professional.

210. Appropriate medical and psychiatric care includes monitoring the effects of psychiatric medications. This is especially important when a patient is switched to a new medication or new combination of medications. At the Garfield County Jail, however, prisoners who receive psychiatric medications from the jail's on-call physician are not monitored by qualified mental health professionals with appropriate training and experience.

211. Defendants are deliberately indifferent to the risk that their policies and practices will violate the rights of prisoners with serious mental health needs.

VII. PUNISHMENT WITHOUT DUE PROCESS OF LAW

212. It is standard operating procedure in the Garfield County Jail for deputies to "sentence" prisoners to significant punishments for alleged disciplinary infractions, including minor breaches of jail rules, without due process and without following the procedures in the Inmate Handbook.

213. In many cases, the punishment is imposed on prisoners for alleged actions that are most appropriately understood as symptoms of the prisoners' serious mental health problems, which, through the Defendants' deliberate indifference, the jail has failed to treat or has treated inadequately.

214. The jail's Inmate Handbook lists a variety of disciplinary infractions for which prisoners can be subjected to punishment. The current version lists 29 separate "Class I" offenses that are classified as "minor violations." An additional 37 offenses are listed as "Class II" offenses that are classified as "major violations." Finally, an additional 29 offenses are listed as "Class III" violations, which are classified as "serious violations."

215. Minor violations listed in the Inmate Handbook include making "unnecessary noise," having newspapers and magazines in a prisoner's cell, using profanity, sharing

commissary purchases with other prisoners, or failure to obey a direct order from a deputy. According to the handbook, "repeated" minor offenses elevate the infraction from Class I to Class II, and repeated Class II violations become a Class III offense.

216. The Inmate Handbook provides that punishment for disciplinary violations is imposed "if the hearing board finds the inmate guilty of a rule or regulation violation." It is standard operating procedure, however, to impose punishment for disciplinary violations without notice, without a hearing, and without any opportunity for prisoners to rebut, deny, or explain the accusations against them. In addition, in the very rare cases in which some prisoners receive some kind of process before punishment is imposed, the procedures employed do not comport with the minimal requirements of due process. For example, prisoners do not receive adequate notice of what they are accused of doing, thus interfering with their ability to prepare a defense. In addition, when prisoners receive a "sentence" after the very rare disciplinary hearing, they are forced to sign a paper with the text covered up; they cannot read the paper until after they have signed.

217. Mr. Vandehey has been punished for disciplinary infractions on multiple occasions. He has received notice of a disciplinary hearing only once. The notice he received simply listed the numbers assigned to the alleged infractions in the Inmate Handbook; it did not describe what Mr. Vandehey allegedly did that violated the jail's rules. When the date of the hearing approached, Mr. Vandehey was in an emotional state where he knew that his mental health problems would interfere substantially with his ability to communicate effectively with the hearing board. He asked that the hearing be continued to give him time to calm down. Despite Mr. Vandehey's reasonable request for a continuance based on his serious mental health problems, the deputies conducted the "hearing" in Mr. Vandehey's absence. They concluded

that Mr. Vandehey's absence was "an admission of guilt on all counts." He was "sentenced" to 60 days in supermax.

218. Prisoners are regularly and summarily punished with "sentences" to a diet of nutraloaf for a specified number of days or sentences to "max" or "supermax" for a specified number of days, without due process and without being afforded the hearing described in the Inmate Handbook. Mr. Langley and Mr. Vandehey have been sentenced repeatedly to these punishments without any hearing and without due process.

219. Prisoners who have filed grievances asking for hearings have been told that they have no right to a hearing or that no hearing is required.

220. Prisoners on "supermax" status have been disciplined for violating rules that are unique to the "supermax" classification, such as the rule that prohibits speaking to another prisoner. These rules are not contained in the Inmate Handbook or in any other written document to which prisoners have access. One prisoner filed a kite, saying "Please give me a supermax rule book so I can follow your rules." A deputy responded by writing "There is no such thing." Although the Defendants began sentencing prisoners to "supermax" punishments in the fall of 2005, it was not until May or June, 2006 that any of the Plaintiffs received a new version of the Inmate Handbook that acknowledges the existence of "supermax" status, although it still fails to reveal any the rules governing "supermax" or any of the specific deprivations that supermax prisoners are forced to endure. The Inmate Handbook that the Plaintiffs first received in May or June, 2006, states on the cover that it was revised in March, 2006.

221. Prisoners on "supermax" status are permitted an hour of recreation time, one-at-a-time, in a small fenced-in outdoor patio that adjoins the common area. They cannot use this out-of-cell time for showering, watching TV, reading magazines or newspapers, or using the

legal reference materials in the common area. In addition, supermax prisoners are required to take their one hour of recreation time whenever deputies decide to provide it. Last winter, deputies added an additional punishment for supermax prisoners by deliberately calling their recreation time while it was still dark outside, when temperatures outside were below freezing and sometimes below zero. The jail does not provide coats or jackets, so prisoners were forced to go outside without appropriate clothing or forfeit their recreation time for the day. Mr. Vandehey was faced with this choice in January at a time when he did not have any shoes.

222. The Inmate Handbook states that prisoners cannot be deprived of bedding as a disciplinary sanction, yet mattresses, sheets and blankets have been confiscated as punishment. The Handbook states that food cannot be withdrawn as punishment. Nevertheless, prisoners' meals are withheld and they are "sentenced" to a diet of nutraloaf, which is not mentioned in the Inmate Handbook. Defendants have no written policies governing the substitution of nutraloaf for regular meals.

223. The forgoing punishments and deprivations are imposed, without due process and without following the procedures in the Inmate Handbook, pursuant to the policies and practices of the Defendants. Alternatively, and in combination, these violations of due process are caused by Defendants' deliberately indifferent failure to adequately monitor, supervise, and correct their subordinates' actions.

224. Plaintiffs and the members of the proposed class have suffered or are at imminent risk of suffering the deprivations described above, without due process of law.

VIII. INTERFERENCE WITH PRISONERS' RIGHT TO COMMUNICATE CONFIDENTIALLY WITH ATTORNEYS

225. Defendants and deputies at the Garfield County Jail have infringed, interfered with, and threaten to continue infringing and interfering with, the right of prisoners to communicate confidentially with attorneys whose advice and counsel they seek.

A. Prisoners denied confidential interviews with ACLU attorneys

226. On June 16, 2006, Plaintiff Jared Hogue learned that on the previous day, the Defendants had denied him and two other prisoners an opportunity to participate in a confidential face-to-face interview with Taylor Pendergrass, a staff attorney with the ACLU Foundation of Colorado and one of the attorneys for Plaintiffs in this case.

227. Mr. Hogue had previously written to the ACLU requesting legal assistance, and the other two prisoners had also supplied written communications to the ACLU indicating their interest in legal assistance from the organization's attorneys.

228. Mr. Pendergrass was present at the jail and had requested the opportunity to meet with Mr. Hogue and the two other prisoners.

229. In refusing to permit Mr. Hogue and the other prisoners to meet with Mr. Pendergrass, Defendants relied on what they described as their "policy." According to that "policy," which did not exist in writing, a deputy contacts the prisoner whom the attorney asks to interview. The deputy asks "Who is your attorney?" If the prisoner does not identify the attorney requesting the interview, then the interview is not permitted.

230. Pursuant to Defendants' instructions, neither Mr. Hogue nor the other two prisoners were informed that an ACLU attorney was present at the jail and willing to meet with the prisoners. When deputies asked "Who is your attorney?," Mr. Hogue and the other two prisoners understandably responded by providing the names of their criminal defense attorneys.

They did not know the potential consequences of their answer. They did not know that they were being asked a "trick question."

231. Mr. Hogue wanted to meet with Mr. Pendergrass. Had the deputies informed Mr. Hogue that an ACLU attorney was at the jail and asking for a confidential meeting, Mr. Hogue would have said he wanted to participate. The same is true with regard to the other two prisoners who were denied the opportunity to meet with Mr. Pendergrass.

232. The undersigned attorneys for Plaintiffs had been to the Garfield County Jail on one earlier occasion, on May 11, 2006. At that time, they met with Mr. Vandehey, Mr. Lincoln, and a third prisoner in a confidential setting, without any problems. Deputies did not ask the prisoners "Who is your attorney?" as a prerequisite to permitting the confidential interview.

233. The "policy" that prevented Mr. Hogue from participating in an attorney visit on June 15, 2006, did not exist when ACLU attorneys first visited the jail on May 11, 2006. In early June, Defendants learned that the undersigned attorneys planned to return to the jail from June 14-16 to review documents requested under the Colorado open records laws and to interview additional prisoners. Defendants were furnished with a list, in advance, of prisoners whom the attorneys intended to interview.

234. Defendants invented the "policy" because of, and in anticipation of, the expected return of ACLU attorneys on June 14-16, 2006.

235. The newly-invented "policy" almost prevented Mr. Vandehey from meeting with Mr. Pendergrass on June 14-16, 2006. Mr. Vandehey had previously written to the ACLU seeking legal assistance, and he knew that his request was under investigation. He had signed a release-of-information form and knew that ACLU attorneys had obtained incident reports regarding the occasions on which Mr. Vandehey had been subjected to the use-of-force practices

described in this Complaint. ACLU attorneys had previously interviewed him at the jail on May 11, 2006, and he had received a letter from Mr. Pendergrass indicating that ACLU staff would return to speak with Mr. Vandehey again on June 14-16.

236. Nevertheless, when a deputy asked Mr. Vandehey "Who is your attorney?" Mr. Vandehey responded with the name of his criminal defense attorney. Pursuant to the Defendants' newly-minted "policy," Mr. Vandehey would have been denied the opportunity to meet with ACLU staff. Fortunately, Mr. Langley, who was housed nearby, overheard the deputy's question and Mr. Vandehey's response. Mr. Langley took the risk of incurring a disciplinary sanction by communicating with Mr. Vandehey. Mr. Langley yelled out to Mr. Vandehey to "say the ACLU too." Mr. Vandehey did so, and he was able to meet with ACLU staff.

237. Mr. Lincoln returned to the Garfield County Jail on June 15, 2006. As deputies brought him to the housing unit, he passed by the attorney room where Mr. Pendergrass was speaking with Mr. Langley. Mr. Lincoln shouted though the glass window that he wanted to speak with Mr. Pendergrass. Mr. Langley shouted back that Mr. Lincoln would have to say "the ACLU" if and when the deputies asked "Who is your attorney?" Had Mr. Lincoln not been informed of the "correct" answer to the "trick question," he, too, would have been denied the opportunity to meet with an ACLU attorney.

238. Mr. Hogue and the other two prisoners who were denied the opportunity to meet with an attorney were housed in a different section of the jail. No one told them the "correct" answer to the "trick question."

239. Defendant Dawson later stated that he changed the "policy" in the week after June 15. According to Defendant Dawson, "[t]he revised policy is that Jail staff members ask inmates

for the name of their attorney, or the name of any group or attorney from whom the inmate is seeking legal representation." The revised "policy" also requires prisoners to provide the "correct" answer to a "trick question" as a prerequisite to exercising their right to meet with an attorney who is willing to speak with them.

240. Defendant Dawson stated that the revised "policy" did not exist in written form.

241. The Defendants' new "policy," whether in its original or in its "revised" form, poses a substantial risk of denying Plaintiffs and other prisoners the opportunity to meet with attorneys who are present and willing to speak with them.

242. For example, it denies prisoners the opportunity to meet with attorneys when the attorney has appeared at the jail at the request of friends or family members who have retained the attorney or have asked the attorney to consider representing the prisoner. Prisoners do not always know the name of an attorney who has been retained or contacted by friends or family. Indeed, prisoners may not even know beforehand that friends or family have retained or contacted an attorney who has been retained or is considering representation.

243. In addition, many prisoners write to a number of attorneys and organizations seeking legal representation. A prisoner who is suddenly asked for the names of any organizations or attorneys from whom the prisoner has sought assistance may be unable to produce a complete list, orally, on the spot. Mr.Vandehey's experience in nearly missing the opportunity for an attorney visit demonstrates the risk that a prisoner could easily fail to provide the "correct" answer to the open-ended "trick question."

B. Additional violations and threatened violations of prisoners' right to communicate confidentially with attorneys

244. Shortly after deputies shot Plaintiff Samuel Lincoln with pepperballs in January, 2006, he wrote to the ACLU of Colorado to complain about his treatment by the Garfield County

Sheriff's Department. He followed the procedure in the Inmate Handbook for sending confidential letters to attorneys, which permits prisoners to seal a letter that is designated as "privileged" mail before handing it to the deputies for mailing. A deputy refused to mail the letter however, unless Mr. Lincoln agreed to open it for the deputy to inspect its contents. Mr. Lincoln refused to do so. Although the deputy took the letter, Mr. Lincoln did not know whether the deputy would mail it or not. The ACLU never received the letter. The first communication the ACLU received from Mr. Lincoln was several months later, in May, 2006, when Mr. Lincoln wrote from the Mesa County Jail.

245. In a meeting on June 15, 2006, Defendants were advised that a prisoner had reported that a deputy had refused to mail a prisoner's letter to the ACLU unless the prisoner first opened it and allowed the deputy to inspect its contents. Defendant Vallario dismissed the prisoner's complaint, saying "He's in jail. He's a friggin' criminal."

246. On June 15, 2006, Plaintiff Samuel Lincoln returned to the Garfield County Jail. He had a preliminary hearing scheduled in his Garfield County case the next day. He asked for a telephone call so that he could contact his criminal defense attorney about the preliminary hearing. He was not allowed a telephone call. Mr. Lincoln asked for writing materials so that he could write his attorney a letter. He was denied writing materials.

247. On information and belief, deputies' interference with prisoners' right to communicate confidentially with attorneys is carried out pursuant to the informal policy, custom, or practice of the Defendants. Alternatively, Defendants are aware of the deputies' practices and, though deliberate indifference to the risk of further violations of prisoners' rights, have failed to intervene or correct the deputies' practices.

IX. EXHAUSTION OF ADMINISTRATIVE REMEDIES

248. The named Plaintiffs have exhausted all available administrative remedies with respect to the legal claims in this First Amended Complaint. They have attached the documentation that is available to memorialize their exhaustion of all available administrative remedies. They cannot attach complete documentation in all cases, however, because the prisoners do not always receive copies of such documentation, and the jail's grievance procedure does not actually operate in the manner described in the Inmate Handbook.

249. The grievance procedure for the Garfield County Jail is spelled out in the Inmate Handbook. The grievance procedure reads as follows:

> The Detention Officer on duty will provide an Inmate Request/Grievance Form "KITE" for all inmates wishing to file a grievance. The Inmate Request/Grievance Form "KITE" will be reviewed to see if there were prohibited acts by a staff member, a civil rights violation has occurred, or if there has been an abridgement of an inmate's privilege. If the grievance is of an emergency nature, it should be so noted. If not, the grievance will be answered within 15 days. An inmate has the right to appeal the decision to the grievance review board and then to the Jail Commander. The Jail Commander's decision is **FINAL**. It should be noted that abuse of the kite system **will not** be tolerated. If a deputy can answer an inmate's question a kite should not be submitted, however if the deputy cannot answer the request or problem then a kite should be submitted up the chain of command to the corporal.

Garfield County Detention Center, Inmate Handbook, page 20 (bolded, capitalized, and underlined text in original).

250. The Inmate Handbook describes a 3-step procedure. The prisoner first files a grievance. If the prisoner is not satisfied with the response, the prisoner can then appeal first to the "Grievance Review Board," and then to the Jail Commander.

A. The jail's published grievance procedure has not been an available administrative remedy

251. The procedure described in the Inmate Handbook, however, is not actually followed in practice. The three-step procedure described in the Inmate Handbook has not been an "available administrative remedy" to the named Plaintiffs and other prisoners in the jail.

252. The Inmate Handbook contains no written guidance about how prisoners can file an appeal of a grievance or how they can advance to the second or third steps of the published grievance procedure. The only written guidance regarding appeals is provided in the text of the "Inmate Request/Grievance Form 'KITE'" that is referenced in the published grievance procedure.

253. The "Inmate Request/Grievance Form 'KITE'" is a blank form that ordinarily consists of four colored sheets. Anything written on the top sheet is intended to be reproduced on the lower sheets as a carbon copy. The form indicates at the bottom that the white sheet goes into the prisoner's file; the yellow sheet is the "inmate copy"; the pink sheet is the "inmate initial copy" and the goldenrod sheet goes to the housing unit file.

254. The form indicates that the jail's response to a prisoner's initial grievance is regarded as an "informal resolution." The form contains a box that a prisoner can sign and date if the informal resolution is not acceptable. Below that box is another box that states "This Request/Grievance Has Been Submitted to the Grievance Review Board." Below that box is yet another box to indicate that the Grievance Review Board has replied to the prisoner.

255. The organization of the "Inmate Request/Grievance Form 'KITE'" suggests that prisoners have appealed the result of their first-level grievance when they sign the box that indicates that they are not satisfied with the informal resolution and they return the form to a deputy. When prisoners do that, however, they do not receive any response from the

Grievance Review Board. Indeed, there is nothing that prisoners can do that will ensure that they receive a response from the Grievance Review Board.

256. The fine print on the "Inmate Request/Grievance Form 'KITE'" suggests that filing an appeal requires that the prisoner also file an additional "Inmate Request/Grievance Form 'KITE'" explaining why the informal resolution is not acceptable. When prisoners do that, however, the grievance is not sent to the Grievance Review Board. Instead, the prisoners simply receive another informal response, often from the same deputy who had already responded to the initial first-level grievance. Some prisoners have tried again and again to appeal to the Grievance Review Board, and each time they have either received no response or they received an "informal resolution" at the first level of the grievance procedure. It is the standard practice at the Garfield County Jail to prevent prisoners from appealing the denial of their first-level grievances to the Grievance Review Board.

257. Contrary to the text of the Inmate Handbook, the "Grievance Review Board" does not function or fulfill the role of a second-stage forum for prisoner grievances. On June 14, 2006, in response to requests under the Colorado open records laws, the Defendants permitted the Plaintiffs' attorneys to inspect what the Defendants represented as all kites and grievances, and responses to those kites and grievances, regarding 10 current and former prisoners who had signed release-of-information forms. The Defendants produced more than 125 "Inmate Request/Grievance Form 'KITE'" forms on which prisoners indicated they were dissatisfied with the response to their first-level grievance. The files contained dozens of examples of cases in which prisoners also tried to file a separate appeal to the Grievance Review Board. In all cases, the prisoners either received no response at all, or they received another informal response that

erroneously treated their attempt to appeal as a first-level grievance. In no case did a prisoner ever receive a written response from the jail's Grievance Review Board.

258. The Defendants' response to another request under the Colorado open records laws further demonstrates that the "Grievance Review Board" does not function as the second-level forum described in the Inmate Handbook. Attorneys for Plaintiffs asked to inspect all documents "that relate to or discuss the operation, membership, and procedures of the jail's Grievance Review Board." Attorneys for Plaintiffs further elaborated by specifying that the requested documents include any that would reflect the membership of the jail's Grievance Review Board; any documents memorializing the policies, procedures, or decision-making process of the Grievance Review Board; any documents that would reveal any dates on which the Grievance Review Board had met in the past 12 months; any documents that would reveal the number of occasions that the Grievance Review Board had met in the last year; and documents that would reveal how many decisions were considered or made by the Grievance Review Board in the past year. The Defendants reported that no responsive documentary materials existed.

259. Various deputies have told prisoners on different occasions a) that the grievance board does not exist; b) that the grievance board is composed of three specific sergeants; c) that the grievance board consists of any three jail staff who can convene on any given day; and d) that the grievance board meets only to consider disciplinary cases and investigations. These conflicting statements further demonstrate that the Grievance Review Board does not function as the second stage of a regularly-functioning grievance procedure. An appeal to the Grievance Review Board is not an available administrative remedy.

260. Prisoners are often frustrated by the jail's failure to follow the grievance procedures in the Inmate Handbook. Among the prisoners, it is widely known that the second-stage appeal to the "Grievance Review Board" is not actually available to them. Accordingly, many prisoners simply give up after their first-level grievance is denied. In such cases, they have nevertheless exhausted the administrative remedies that are available to them.

261. Although some prisoners persist in trying to file multiple additional kites in a fruitless attempt to appeal to the Grievance Review Board, they also eventually give up. Nevertheless, these prisoners have exhausted the administrative remedies that are available to them.

262. In some cases, prisoners are required to give up their attempt to file grievances or appeals because deputies threaten them with a charge of "abuse of the kite system," which the Inmate Handbook lists as a "major" disciplinary violation, punishable by up to 30 days of disciplinary status for each "offense." Prisoners contemplating the filing of a grievance do so under the threat that they will be charged with a "major" disciplinary violation if their grievance is deemed, by unknown standards, to constitute "abuse." In cases where the threat of a disciplinary charge chills prisoners from filing grievances or grievance appeals, the prisoners have exhausted the administrative remedies that are available to them.

263. Occasionally, a prisoner's grievance or a prisoner's appeal has been answered directly by Jail Commander Scott Dawson. In such situations, the grievance has been decided by the individual identified in the grievance policy as the final decisionmaker. In those situations, the prisoner has exhausted all available administrative remedies.

264. In addition, prisoners are sometimes denied access to the grievance procedure entirely. A document in Mr. Vandehey's file confirms that for some period of time in February,

2006, he was prohibited from obtaining the forms necessary for initiating the grievance process. For several months preceding the filing of this lawsuit, Mr. Langley has been prohibited from receiving any grievance forms unless his request for a form is first reviewed and approved by a supervisor. Similarly, Mr. Lincoln has requested grievance forms and been refused. When prisoners are refused access to the grievance forms, there are no available administrative remedies for the prisoner to exhaust.

265. The jail's published grievance procedure is not an available remedy for prisoners whose complaint is the denial of adequate medical or mental health care. When prisoners submit a request or a grievance regarding medical care on the form that is titled Inmate Request/Grievance Form "KITE," they are often told that they must submit a "medical kite" instead. When prisoners submit such a form, whether they label it a grievance or a request, the form is forwarded to the jail's medical staff. When the jail's medical staff denies the grievance or the request, the jail's published grievance procedure does not describe any process for appeal. Accordingly, prisoners who have filed a grievance with the jail's medical staff have exhausted all available administrative remedies.

266. Although the jail's Grievance Review Board has not functioned as the second-level forum described in the Inmate Handbook, in at least one case in February, 2006, a grievance filed by Plaintiff Hogue eventually resulted in some kind of a meeting with three officers, and Mr. Hogue actually received a written response rejecting his grievance. That response, however, stated that there would be no more kites allowed on the issue, thus making unavailable the third-level appeal to the Jail Commander that is described in the Inmate Handbook. Nevertheless, in that particular case, Mr. Hogue also received a response directly from Defendant Dawson.

267. After the Defendants stated on June 14-16, 2006, that they had no documents regarding the jail's Grievance Review Board, Defendants appear to have modified how they respond to grievances and attempted grievance appeals filed by the Plaintiffs in this case.

268. Until the end of June, 2006, deputies regularly responded to prisoners' first-level grievances within one or two days. In recent weeks, however, the named Plaintiffs have not received responses to first-level grievances until 15 days after they have been submitted. Deputies have deliberately delayed giving their responses to prisoners even when those responses had been completed long before 15 days has elapsed.

269. In addition, after Mr. Hogue appealed the denial of his grievance regarding the new "policy" for attorney visits, three deputies met with Mr. Hogue. They said that they were the jail's Grievance Review Board. Although other grievance appeals have not resulted in face-to-face meetings with any review board, some prisoners have now, for the first time, received responses to their appeals that are signed by three deputies. In these cases, too, the deputies have deliberately delayed delivering their written responses to the prisoners until 15 days have elapsed since the filing of the grievance appeal. The deputies have delayed delivering these responses even when the responses have been completed and dated up to a week earlier.

270. On information and belief, the deputies' delay in delivering responses to prisoners' grievances has been carried out pursuant to orders from the Defendants. On information and belief, the Defendants have issued such orders for the sole purpose of delaying or denying prisoners' ability to fully exhaust available administrative remedies and thereby thwart their ability to raise their legal claims in court.

B. Plaintiff Clarence Vandehey

271. A number of Mr. Vandehey's grievances and attempts to file appeals were eventually answered directly by Defendant Dawson, the highest-level decisionmaker in the jail's grievance procedure. Documentation of Mr. Vandehey's exhaustion of all available administrative remedies is attached to this First Amended Complaint.

C. Plaintiff William Langley

272. A number of Mr. Langley's grievances and attempts to file appeals were eventually answered directly by Defendant Dawson, the highest-level decisionmaker in the jail's grievance procedure. Accordingly, Mr. Langley has exhausted all available administrative remedies.

273. On June 16, 2006, Mr. Langley filed a grievance about the use of the electroshock belt. The grievance was denied on June 19. Mr. Langley indicated on that kite that the first-level response was not acceptable to him. A copy of Mr. Langley's grievance and the jail's response are attached. Mr. Langley asked for another kite so that he could appeal the denial of his grievance. The deputy refused to allow Mr. Langley another kite to appeal the denial. Accordingly, the remainder of the published grievance procedure was not available to Mr. Langley, and he has exhausted all available administrative remedies on the electroshock belt issue. Documentation of Mr. Langley's exhaustion of available administrative remedies is attached to this First Amended Complaint.

C. Plaintiff Samuel Lincoln

274. This First Amended Complaint is filed at a time when Mr. Lincoln is not housed in the Garfield County Jail, although he is certain to return to the jail in the near future. At the

present time, there are no administrative remedies of the Garfield County Jail available to Mr. Lincoln.

275. When Mr. Lincoln was housed in the Garfield County Jail, he did exhaust all available administrative remedies. He is unable to attach full documentation, however, for the reasons that follow.

276. Mr. Lincoln was housed continuously in the Garfield County Jail from December, 2005 through the beginning of April, 2006. During that time Mr. Lincoln filed multiple grievances challenging the punitive use of the restraint chair and the confiscation of his bedding as punishment. He appealed the denial of his first-level grievance, and he never received a response. Those documents are attached.

277. Mr. Lincoln returned to the Garfield County Jail on June 15, 2006 and stayed until June 17, 2006. During that time, Mr. Lincoln attempted to file several grievances in order to exhaust administrative remedies with regard to the legal claims raised in this First Amended Complaint. On June 16, 2006, Mr. Lincoln requested grievance forms, and a deputy said he would provide them. That deputy never provided a kite, however, and Mr. Lincoln's additional requests for grievance forms were denied by jail staff.

278. On the evening of June 16, 2006, Mr. Lincoln was able to secure one grievance form from a new deputy who was working on the late-night shift. Mr. Lincoln wrote out a grievance about the jail's arbitrary and inconsistent disciplinary practices. A copy of Mr. Lincoln's grievance about arbitrary disciplinary practices is attached to this First Amended Complaint. When Mr. Lincoln turned the grievance in, however, the deputy read the grievance and stated that Mr. Lincoln could not file a grievance on that issue. Mr. Lincoln's requests for additional kites to file additional grievances were denied.

279. Had Mr. Lincoln been allowed access to the grievance process, he would have filed grievances challenging the jail's use of 1) the electroshock belt, 2) the use and threatened use of the pepperball gun, pepper spray and the taser, and 3) the jail's use of the restraint chair. Mr. Lincoln had already written out the text of the grievances he intended to file if he had not been denied access to the jail's administrative remedies. He has exhausted all available administrative remedies with regard to the following grievances:

Restraint chair:

I want to grieve the jail's practice of strapping prisoners in the restraint chair. Prisoners are placed in the chair without adequate reason, for too long, and without adequate medical involvement. Prisoners who have been subjected to pepper spray or pepperballs are forced to remain strapped in the chair without any opportunity to wash off the pepper. This has happened to me and could happen again.

Use and threatened use of tasers, pepper spray, and pepperballs

I want to grieve the jail's use of tasers and pepper spray and pepperballs. Officers use or threaten to use these weapons in situations where such drastic force is not justified, and without adequate medical involvement. I have been threatened with unjust use of one or more of these devices and this could happen again.

Prisoners' right to communicate confidentially with attorneys

I want to grieve the jail's practice of interfering with prisoners' ability to communicate with attorneys and obtain access to legal assistance. I wrote to the ACLU to ask for legal assistance regarding the violations of prisoners constitutional rights in the jail. I sealed the letter and marked it as "legal mail" and followed the procedures in the inmate handbook. An officer brought it back and said I had to open it for their inspection. I refused and said it was legal privileged mail. The officer took the letter but I learned later that the letter did not get sent to the ACLU. This could happen again.

D. Plaintiff Jared Hogue

280. Documentation of Mr. Hogue's exhaustion of the available administrative remedies is attached to this First Amended Complaint.

X. CLASS ACTION ALLEGATIONS

281. Plaintiffs bring this action on behalf of themselves and all others similarly situated, pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

282. All Plaintiffs represent a class of persons defined as follows:

> All persons who, now or at any time in the future, are or will be prisoners in the custody of the Garfield County Sheriff's Department.

283. Plaintiffs Vandehey, Lincoln, and Hogue represent a subclass of persons (Subclass A) defined as follows:

> All pretrial detainees who, now or at any time in the future, are or will be prisoners in the custody of the Garfield County Sheriff's Department.

284. Plaintiff William Langley represents a subclass of persons (Subclass B) defined as follows:

> All post-conviction prisoners who, now or at any time in the future, are or will be prisoners in the custody of the Garfield County Sheriff's Department.

285. The proposed classes are so numerous that joinder of all members is impracticable. In 2004, the average daily population of the jail was 150 prisoners, but the majority of prisoners are released within 72 hours. Another large group is released within 3-10 days.

286. There are questions of law and fact common to the members of each of the plaintiff classes.

287. The claims of the named Plaintiffs are typical of the claims of the members of the class.

288. The named Plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs have no interest that is now or may be potentially antagonistic to the interests of the class. Plaintiffs are represented by attorneys employed by and working in cooperation with the

ACLU Foundation of Colorado, which has extensive experience in litigating federal court class action cases involving federal civil rights claims.

289. Defendants have acted or refused to act on grounds generally applicable to the classes, thereby making appropriate injunctive and declaratory relief to the class as a whole.

XI. DECLARATORY AND INJUNCTIVE RELIEF

290. An actual and immediate controversy exists between Plaintiffs and Defendants. Plaintiffs contend that the challenged policies and practices violate their constitutional rights. Defendants contend that the challenged policies and practices comply with the law.

291. Plaintiffs are therefore entitled to a declaration of rights with respect to this controversy. Without such a declaration, Plaintiffs will be uncertain of their rights and responsibilities under the law.

292. Plaintiffs are entitled to injunctive relief. Defendants have enforced and threatened to continue enforcing the challenged policies and practices against the Plaintiffs. Defendants have acted and are threatening to act under color of state law to deprive Plaintiffs of their constitutional rights. Plaintiffs have suffered irreparable injury and will continue to suffer a real and immediate threat of irreparable injury as a result of the existence, operation, and implementation of the challenged policies and practices. Plaintiffs have no plain, adequate or speedy remedy at law.

XII. CLAIMS FOR RELIEF

A. FIRST CLAIM FOR RELIEF

(Threats and use of excessive and disproportionate force; punitive use of restraints)
(Eighth and Fourteenth Amendments; Colo. Const. Art. II Secs. 20, 25)
(Plaintiffs Vandehey, Lincoln, Langley, and Hogue)

293. Deputies at the Garfield County Jail have subjected and threatened to subject Plaintiffs Vandehey, Lincoln, and Hogue, and the subclass of pretrial detainees, to the use of force, including the use of restraint chairs, pepperball guns, tasers and/or pepper spray, in a manner that constitutes excessive and disproportionate physical force; unnecessarily and wantonly inflicts mental and physical pain; shocks the conscience; inflicts corporal punishment and mental suffering as retaliation or punishment for past conduct; poses an unreasonable and unjustifiable risk of harm to their health and safety; and that is not reasonably related to any legitimate governmental objective, in violation of the Due Process Clause of the Fourteenth Amendment and Article II, Section 25 of the Colorado Constitution.

294. Deputies at the Garfield County Jail have subjected and/or threatened to subject Plaintiff Langley, and the subclass of convicted prisoners, to the use of force, including the use of restraint chairs, pepperball guns, tasers and/or pepper spray, in a manner that constitutes excessive and disproportionate physical force imposed maliciously and sadistically for the purpose of causing harm; intentionally inflicts corporal punishment and physical and mental pain as retaliation or punishment for past conduct; unnecessarily and wantonly inflicts mental and physical pain; poses an unreasonable and unjustifiable risk of harm to their health and safety; is not reasonably related to any legitimate penological interest; and inflicts cruel and unusual punishment, in violation of the Eighth Amendment and Article II, Section 20 of the Colorado Constitution.

295. The deputies' acts and omissions, and threatened acts and omissions, were carried out pursuant to the policies, customs, and practices of the Defendants. In adopting, authorizing, and ratifying those policies customs and practices, Defendants have been and continue to be deliberately indifferent to the risk of violating the constitutional rights of the Plaintiffs and members of the Plaintiff class.

296. Alternatively and in combination, Defendants' deliberately indifferent failure to ensure adequate training of their deputies has caused and threatens to continue causing, violations of the Plaintiffs' constitutional rights.

297. Alternatively and in combination, Defendants' deliberately indifferent failure to ensure adequate monitoring and supervision of their deputies' conduct has caused, and threatens to continue causing, violations of the Plaintiffs' constitutional rights.

298. Plaintiffs Vandehey, Lincoln and Hogue, and the member of the subclass of pretrial detainees, face a continuing and imminent risk that they will be subjected to the use and threatened use of force, including the use of restraint chairs, pepperball guns, tasers and/or pepper spray, in a manner that constitutes excessive and disproportionate physical force; unnecessarily and wantonly inflicts mental and physical pain; shocks the conscience; poses an unreasonable and unjustifiable risk of harm to their health and safety; and inflicts unconstitutional punishment that is not reasonably related to any legitimate governmental objective.

299. Plaintiff Langley, and the subclass of convicted prisoners, face a continuing and imminent risk that they will be subjected to the use and threatened use of force, including the pepperball gun and/or the restraint chair, in a manner that constitutes excessive and disproportionate physical force imposed maliciously and sadistically for the purpose of causing

harm; purposely inflicts corporal punishment, and physical and mental pain as retaliation or punishment for past conduct; unnecessarily and wantonly inflicts mental and physical pain; poses an unreasonable and unjustifiable risk of harm to their health and safety; is not reasonably related to any legitimate penological interest; and inflicts cruel and unusual punishment.

300. WHEREFORE, Plaintiffs seek declaratory and injunctive relief, attorneys' fees, and such other relief as the Court deems just.

B. SECOND CLAIM FOR RELIEF
(Eighth and Fourteenth Amendments; Colo. Const. Art. II, Secs. 20, 25)
(Electroshock belt; Plaintiffs Lincoln, Langley and Vandehey)

301. Deputies at the Garfield County Jail have subjected and threatened to subject Plaintiffs Vandehey and Lincoln, and the subclass of pretrial detainees, to the use of the electroshock belt in a manner that unnecessarily and wantonly inflicts fear, anxiety, mental pain and torture; shocks the conscience; poses an unreasonable risk of inflicting unjustified excruciating pain; poses an unreasonable and unjustifiable risk of harm to their health and safety; and inflicts unconstitutional punishment that is not reasonably related to any legitimate governmental objective, in violation of the Due Process Clause of the Fourteenth Amendment and Article II. Section 25 of the Colorado Constitution.

302. Deputies at the Garfield County Jail have subjected and threatened to subject Plaintiff Langley and the subclass of convicted prisoners to the electroshock belt in a manner that unnecessarily and wantonly inflicts fear, anxiety, mental pain and torture; inflicts mental pain and torture maliciously and sadistically for the purpose of causing harm; poses an unreasonable and unjustifiable risk of inflicting unjustified excruciating pain; poses an unreasonable and unjustifiable risk of harm to their health and safety; is not reasonably related to any legitimate

penological interests; and inflicts cruel and unusual punishment, in violation of the Eighth Amendment and Article II, Section 20 of the Colorado Constitution.

303. Plaintiff Langley and the subclass of convicted prisoners have a liberty interest, protected by the Due Process Clause, in being free of the restraint and terror prompted by being forced to wear the electroshock belt. Deputies have deprived and threaten to continue depriving Mr. Langley of that liberty interest without due process of law, in violation of the Due Process Clause and Article II, Section 25 of the Colorado Constitution.

304. The deputies' acts and omissions, and threatened acts and omissions, were carried out pursuant to the policies, customs, and practices of the Defendants. In adopting, authorizing, and ratifying those policies customs and practices, Defendants have been and continue to be deliberately indifferent to the risk of violating the constitutional rights of the Plaintiffs and members of the Plaintiff class.

305. Alternatively and in combination, Defendants' deliberately indifferent failure to ensure adequate training of their deputies has caused and threatens to continue causing, violations of the Plaintiffs' constitutional rights.

306. Alternatively and in combination, Defendants' deliberately indifferent failure to ensure adequate monitoring and supervision of their deputies' conduct has caused, and threatens to continue causing, violations of the Plaintiffs' constitutional rights.

307. Plaintiffs and members of the Plaintiff class face a continuing and imminent risk that they will be subjected to the electroshock belt in the future in a manner that violates their constitutional rights.

308. WHEREFORE, Plaintiffs seek declaratory and injunctive relief, attorneys' fees, and such other relief as the Court deems just.

C. THIRD CLAIM FOR RELIEF
(Eighth and Fourteenth Amendments; Colo. Const. Art. II, Secs. 20, 25)
(Freedom from Bodily Restraint; Plaintiffs Vandehey, Langley, and Lincoln)

309. Even when they are legitimately confined as pre-trial detainees or after a criminal conviction, Plaintiffs retain a liberty interest in freedom from bodily restraint, which is protected by the Due Process Clause of the Fourteenth Amendment and Article II, Section 25 of the Colorado Constitution.

310. Prisoners who are strapped in a restraint chair experience an atypical and significant hardship in relation to the ordinary incidents of life in a detention facility or a prison.

311. Deputies at the Garfield County Jail have subjected and threatened to subject the Plaintiffs and the plaintiff class to confinement in the restraint chair under circumstances that have deprived them of their liberty interest in freedom from bodily restraint, without due process of law.

312. The deputies' acts and omissions, and threatened acts and omissions, were carried out pursuant to the policies, customs, and practices of the Defendants. In adopting, authorizing, and ratifying those policies customs and practices, Defendants have been and continue to be deliberately indifferent to the risk of violating the constitutional rights of the Plaintiffs and members of the Plaintiff class.

313. Alternatively and in combination, Defendants' deliberately indifferent failure to ensure adequate training of their deputies has caused and threatens to continue causing, violations of the Plaintiffs' constitutional rights.

314. Alternatively and in combination, Defendants' deliberately indifferent failure to ensure adequate monitoring and supervision of their deputies' conduct has caused, and threatens to continue causing, violations of the Plaintiffs' constitutional rights.

315. Plaintiffs and member of the Plaintiff class face a continuing and imminent risk that they will be subjected to the restraint chair in the future in a manner that violates their constitutional rights.

316. WHEREFORE, Plaintiffs seek declaratory and injunctive relief, attorneys' fees, and such other relief as the Court deems just.

D. FOURTH CLAIM FOR RELIEF
(First, Sixth, and Fourteenth Amendments)
(Colo. Const., Art. II, Secs. 10, 16, 25; C.R.S. §§ 16-3-403, 404)
(Confidential communications with attorneys; Plaintiffs Hogue and Vandehey)

317. The right of prisoners to seek legal assistance and communicate confidentially with attorneys and their staff is protected by various provisions of the United States Constitution. Those provisions include the First Amendment, the Sixth Amendment, and the Due Process Clause of the Fourteenth Amendment.

318. The same right is protected by similar provisions in the Colorado Constitution, including Article II, sections 10, 16, and 25. The right is further protected by two specific Colorado statutes, C.R.S. §§ 16-3-403 and 16-3-404.

319. Defendants have adopted what they call a "policy" that interferes with, prevents, and denies prisoners' right to communicate confidentially with attorneys. The "policy" has prevented Mr. Hogue and other prisoners from meeting with attorneys who were present at the jail and willing to meet with the prisoners.

320. In preventing Mr. Hogue from meeting with an attorney on June 15, 2006, Defendants violated C.R.S. § 16-3-403. Pursuant to C.R.S. § 16-3-404, each of the Defendants "shall forfeit and pay not less than one hundred dollars nor more than one thousand dollars to the person imprisoned or to his attorney for the benefit of the person imprisoned."

321. The continued operation of the Defendants' "policy" threatens to violate the statutory and constitutional rights of Mr. Hogue , Mr. Vandehey, and the Plaintiff class in the future.

322. WHEREFORE, Plaintiff requests declaratory and injunctive relief; the statutory penalty in C.R.S. §16-3-404, attorneys' fees, and such additional relief as the court deems just.

E. FIFTH CLAIM FOR RELIEF
(Eighth and Fourteenth Amendments)
(Colo. Const., Art. II, Secs. 20, 25; C.R.S. § 17-26-104.5)
(Access to mental health care; Plaintiff Langley)

323. The Eighth and Fourteenth Amendments, and Article II, Sections 20 and 25 of the Colorado Constitution, require the Defendants to provide appropriate care and treatment for prisoners with serious mental health needs, even when the prisoners have no money.

324. In addition, Section 17-26-104.5 of the Colorado Revised Statutes, which deals with medical care in county jails, states that "in no case shall a person's inability to pay be the basis for not providing medical treatment equivalent to the community standard of care."

325. Mr. Langley has a history of serious mental health problems. He alerted the jail's medical staff to those problems, including a history of bipolar disorder and schizophrenia. Because of Mr. Langley's inability to pay, the Defendants have repeatedly denied him medical treatment that is equivalent to the community standard of care.

326. The denial of mental health care to prisoners with serious mental health needs is and has been carried out pursuant to the policies, customs, and practices of the Defendants. Defendants have been and continue to be deliberately indifferent to the serious mental health needs of Mr. Langley and other prisoners with serious mental health needs. Mr. Langley and other prisoners have suffered from unnecessary mental anguish and physical pain as a result of Defendants' deliberate indifference.

327. Plaintiff Langley and members of the Plaintiff class face a continuing and imminent risk that they will be denied mental health care in the future in a manner that violates their constitutional and statutory rights.

328. Wherefore, Mr. Langley requests injunctive and declaratory relief on behalf of himself and the Plaintiff class, as well as attorney's fees and such additional relief as the Court deems just.

F. SIXTH CLAIM FOR RELIEF
(Punishment without due process; 14th Amendment; Colo. Const. Art. II, Sec. 25
(Plaintiffs Langley, Vandehey, Hogue, Lincoln)

329. The deprivations of supermax status represent an atypical and significant deprivation compared to the normal incidents of incarceration in the Garfield County Jail.

330. The Plaintiffs have been punished and are at risk of being punished in the future for alleged disciplinary violations, without notice and without a meaningful opportunity to be heard.

331. Plaintiffs have been punished, and are at risk of being punished in the future, without being afforded the hearing described in the Inmate Handbook.

332. In the rare cases in which Defendants provide a hearing before subjecting a prisoner to punishment, Defendants fail to provide the minimal procedural protections required by the Due Process Clause and Article II, Section 25 of the Colorado Constitution.

333. Plaintiffs have been punished, and are at risk of being punished in the future, without due process of law, in violation of the Due Process Clause of the 14th Amendment and Article II, Section 25 of the Colorado Constitution.

334. The imposition of punishment without due process and without following the procedures in the Inmate Handbook has been carried out pursuant to the informal policies of the Defendants. Alternatively and in combination, Defendants have been and continue to be deliberately indifferent to the risk that their failure adequately to supervise their subordinates has resulted, and will continue resulting, in depriving Plaintiffs and class members of their right to due process of law.

335. Wherefore, Plaintiffs ask this Court for a declaratory judgment, injunctive relief, attorney's fees, and such other relief as the Court deems just.

PRAYER FOR RELIEF

336. WHEREFORE, Plaintiffs request that the Court order each of the Defendants to pay, for the benefit of Mr. Hogue, the statutory penalty described in C.R.S. § 16-3-404.

337. Plaintiffs also request that this Court certify this case as a class action and grant declaratory and injunctive relief on all claims on behalf of the Plaintiffs and the Plaintiff class; attorney's fees, and such other relief as the Court deems just.

Dated August 1, 2006

Respectfully submitted,

s/Mark Silverstein
Mark Silverstein
American Civil Liberties Union Foundation of Colorado
400 Corona Street
Denver, CO 80218
Telephone: (303) 777-5482
FAX: (303) 777-1773
E-mail: msilver2@att.net

s/Taylor S. Pendergrass
Taylor S. Pendergrass

American Civil Liberties Union Foundation of Colorado
400 Corona Street
Denver, CO 80218
Telephone: (303) 777-5482
FAX: (303) 777-1773
E-mail: tpendergrass@aclu-co.org

s/John D. Phillips
John D. Phillips
Shugart Thomson & Kilroy, P.C.
1050 17th Street, Suite 2300
Denver, CO 80265
Telephone: (303) 572-9300
In Cooperation with American Civil Liberties Union Foundation of Colorado

ATTORNEYS FOR PLAINTIFFS