

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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James and Lorie Jensen, as parents, guardians and next friends of Bradley J. Jensen; James Brinker and Darren Allen, as parents, guardians and next friends of Thomas M. Allbrink; Elizabeth Jacobs, as parent, guardian and next friend of Jason R. Jacobs; and others similarly situated,

Plaintiffs,

vs.

Minnesota Department of Human Services, an agency of the State of Minnesota; Director, Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; Clinical Director, the Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; Douglas Bratvold, individually, and as Director of the Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; Scott TenNapel, individually and as Clinical Director of the Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; and State of Minnesota,

Defendants.

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Court File No.: 09-CV-1775 DWF/FLN

**AMENDED CLASS ACTION COMPLAINT  
AND REQUEST FOR INJUNCTIVE AND  
DECLARATORY RELIEF**

***DEMAND FOR JURY TRIAL***

Plaintiffs James and Lorie Jensen, as parents, guardians and next friends of Bradley J. Jensen, James Brinker and Darren Allen, as parents, guardians and next friends of Thomas M. Allbrink, Elizabeth Jacobs, as parent, guardian and next friend of Jason R. Jacobs, and others similarly situated (collectively Plaintiffs), as and for their Complaint against Defendants Minnesota Department of Human Services, an agency of the State of Minnesota; Director,

Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; Clinical Director, the Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; Douglas Bratvold, individually, and as Director of the Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; Scott TenNapel, individually and as Clinical Director, the Minnesota Extended Treatment Options, a program of the Minnesota Department of Human Services, an agency of the State of Minnesota; and the State of Minnesota, (collectively Defendants), state and allege as follows:

**INTRODUCTION**

**OCTOBER 31, 1949**

*“The bonfire which I am lighting tonight consists of 359 strait-jackets, 196 cuffs, 91 straps, and 25 canvas mittens.”*

**GOV. LUTHER YOUNGDAHL  
AT A CEREMONIAL BURNING  
OF MECHANICAL  
RESTRAINTS**

*“No patient in the Anoka State Hospital is in restraint. Those restraints were removed from the patients not by administrative coercion, but by the enlightened attitudes of the superintendent, staff, employees, and volunteer workers of the Anoka State Hospital. They were removed as the hospital’s answer to witchcraft.”*

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*“Documents in individual records revealed that people were being routinely restrained in a prone face down position and placed in metal handcuffs and leg hobbles.”*

**SEPTEMBER 2008**

**MINNESOTA OMBUDSMAN’S  
REPORT, JUST PLAIN  
WRONG, EVALUATING  
MINNESOTA EXTENDED  
TREATMENT OPTIONS  
(METO) PROGRAM**

*“Some individuals were restrained with a waist belt restraint that cuffed their hands to their waist. An individual with an unsteady gait was routinely placed in this type of restraint, putting that person at risk of injury if they should fall. Others were being restrained on a restraint board with straps across their limbs and trunk.”*

*“[I]n most cases where restraints were used the person was calm and cooperative about going into the restraint but began to struggle, cry and yell once they were in the restraints. In some cases, clients appeared conditioned to ‘assume the position’ for application of restraints where they would lie on the floor and put their hands behind their back without resistance.”*

*“If Governor Youngdahl declared we are ‘enlightened’ in 1949, how did we get to this point in 2008?”*

1. This action arises from the abusive, inhumane, cruel and improper use of seclusion and mechanical restraints routinely imposed upon patients of the Minnesota Extended Treatment Options program (METO). The Minnesota Department of Human Services developed and operates METO to provide treatment and care for persons with developmental disabilities, including Plaintiffs Bradley J. Jensen (Bradley), Thomas M. Allbrink (Thomas), Jason R. Jacobs (Jason) and others similarly situated.
2. As a means of behavior modification, coercion, discipline, convenience and retaliation, METO staff restrained Plaintiffs using law enforcement-type metal handcuffs and leg hobbles for conduct as benign as spitting, laughing or hand-washing.
3. Other METO patients with developmental disabilities were similarly restrained with mechanical restraints, including metal handcuffs, leg irons, shackles and/or nylon straps. METO routinely used these restraints on patients for nonthreatening benign behavior, including touching a staff member or an object held by a staff member, bumping into someone, “touching the pizza box,” or not staying within eyesight of staff after taking medication; multiple occasions also existed where a patient was calmly watching TV or eating a snack just prior to the use of a mechanical restraints.
4. METO had restrained 63% of its patients at the time of an investigative review by the State Ombudsman for Mental health and Developmental Disabilities, most of them multiple times; restraining one patient 299 times in 2006 and 230 times in 2007. METO has insisted that restraining patients is “essential” to its program.
5. The behaviors resulting in the imposition of seclusion and mechanical restraints on Bradley, Thomas, Jason and others were for behaviors that were manifestations of their disabilities.

6. Resulting in part from METO's admitted failure to properly train employees, Defendants failed to use appropriate and alternative means of behavior modification, such as positive or social reinforcement, or other positive methods invoking options of least restriction.
7. Through threats of retaliation, intimidation, coercion and fraudulent conduct, Defendants forced upon James and Lorie Jensen the use of restraints on their son Bradley, and, upon information and belief, asserted similar coercive influence over others similarly situated.
8. Defendants' conduct went far beyond any practices permitted by governing law, substantially departed from acceptable professional judgment, practices and standards of care, and plainly violated principles of common decency, dignity, morality and basic human rights.
9. Defendants' unprivileged conduct violated the rights of Plaintiffs and others afforded under the Constitution of the United States, the Constitution of the State of Minnesota and other applicable federal and state law. Defendants acted in clear violation of well-settled law of which reasonable persons would have been aware.
10. Plaintiffs seek damages and injunctive relief, including attorney's fees, resulting from Defendants' unlawful, inhumane, cruel and indefensible treatment of Bradley, Thomas, Jason and others similarly situated.
11. This Amended Complaint provides notice to the United States Department of Justice, Civil Rights Division, of a pattern or practice of violations of the federal rights of Bradley, Thomas, Jason and other residential patients of the METO program. Plaintiffs demand an investigation by the United States Attorney General pursuant to his authority under the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997a *et seq.*

**PARTIES**

12. Bradley is a resident of the state of Minnesota.
13. James and Lorie Jensen (Jensens) are the parents, guardians and next friends of Bradley, and are residents of the state of Minnesota.
14. Thomas is a resident of the state of Minnesota.
15. James Brinker and Darren Allen (Brinker/Allen) are the parents, guardians and next friends of Thomas, and are residents of the state of Minnesota.
16. Jason is a resident of the state of Minnesota.
17. Elizabeth Jacobs (Jacobs) is the parent, guardian and next friend of Jason, and is a resident of the state of Minnesota.
18. Defendant Minnesota Department of Human Services (DHS) is an agency of the State of Minnesota; DHS developed and operates METO, and is responsible for the acts and omissions of DHS employees in the METO program.
19. Defendant Director of METO is responsible for the operation of METO.
20. Defendant Douglas Bratvold was the Director of METO at all times material.
21. Defendant Clinical Director of METO is responsible for the operation of METO.
22. Defendant Scott TenNapel was the Clinical Director of METO at all times material.
23. Defendant State of Minnesota is responsible for all acts and omissions of employees and agents of METO and the Minnesota Department of Human Services.

**CLASS ACTION ALLEGATIONS**

24. Plaintiffs seek to represent a Class pursuant to Rule 23 of the Federal Rules of Civil Procedure.
25. Putative Class Members:

- A. Class Members (Class) consist of patients of the METO program subjected to repeated, excessive and improper use of seclusion methods and restraints routinely imposed as a means of behavior modification, coercion, discipline, convenience and/or retaliation, including the use of law enforcement-type metal mechanical devices in the form of handcuffs and leg hobbles, including leg irons, shackles and/or nylon straps. As a practice, and due to the failure to properly train employees, Defendants failed to employ appropriate and alternative means of behavior modification, such as positive or social reinforcement, or other positive methods invoking options of least restriction.
- B. Subclass Members (Subclass) consist of Class Members who were transferred from the METO program to the Minnesota Security Hospital in St. Peter, Minnesota, which is a facility designed to serve patients found to be mentally ill and dangerous, and which upon information and belief, is not capable of providing proper care and treatment to persons with developmental disabilities.
- C. The proposed Class may include additional subclasses. In the event that discovery shows, or the Court determines, the proposed Class and/or Subclass cannot satisfy Federal Rule 23, Plaintiffs may propose to modify or narrow the definition of the Class or any subclasses.
- D. The Class Period is the date of METO's inception, through the date of filing of this Complaint (Class Period).
- E. The Class is so numerous that joinder of all members is impractical.
- F. The Class is ascertainable, as the names of all Class Members can be identified in business records maintained by Defendants.

- G. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class.
- H. Plaintiffs will fairly and adequately protect the interests of the Class and have no interests adverse to or which directly and irrevocably conflict with the interests of other Class Members.
- I. Plaintiffs are represented by counsel competent in the litigation of claims of the type asserted herein.
- J. Questions of law and fact common to the Class predominate over questions affecting only individual Class Members. Such common questions include, but are not limited to, the following:
  - i. Whether Defendants' acts and/or omissions as alleged herein violate rights granted pursuant to the Eighth and Fourteenth Amendments to the United States Constitution;
  - ii. Whether Minnesota Statutes, section 245.825 and Minnesota Rules 9525.2700 - .2810 violate the United States Constitution and the Constitution of the State of Minnesota;
  - iii. Whether Defendants' acts and/or omissions alleged herein violate Title II of the Americans with Disabilities Act;
  - iv. Whether Defendants' acts and/or omissions alleged herein violate Section 504 of the Rehabilitation Act;
  - v. Whether Defendants' acts and/or omissions alleged herein violate rights granted under the Constitution of the State of Minnesota;

- vi. Whether Defendants' acts and/or omissions alleged herein violate the Minnesota Human Rights Act;
  - vii. Whether Defendants' acts and/or omissions alleged herein violate Minnesota Statutes, section 245.825 and Minnesota Rules 9525.2700 - .2810;
  - viii. Whether Defendants' acts and/or omissions alleged herein violate Minnesota Statutes, section 144.651;
  - ix. Whether Defendants' acts and/or omissions alleged herein violate Minnesota Statutes, section 253B.03;
  - x. Whether Defendants' acts and/or omissions alleged herein violate 42 C.F.R. 482.13; and
  - xi. Whether Defendants' acts and/or omissions alleged herein violate common law rights of the Plaintiffs.
- I. Plaintiffs' claims are typical of the claims of the Class Members because they originate from the same wrongful policy and practices of Defendants, and because Defendants acted in the same way toward Bradley, Thomas, Jason and the Class.
- J. Defendants' actions and/or omissions toward the Class are identical or substantially similar, and arise out of a policy, procedure and common course of wrongful conduct of improperly and excessively restraining METO patients, including the use of law enforcement-type metal mechanical devices in the form of handcuffs and leg hobbles, including leg irons, shackles and/or nylon straps, which caused injury and damage to Bradley, Thomas, Jason and the Class in a



common and consistent manner, and in the coercion practices imposed on the representatives of METO patients.

- K. Plaintiffs will fairly and adequately protect the interests of the Class Members. Plaintiffs are committed to the vigorous prosecution of this action, have retained competent counsel, and have no interests antagonistic to or in conflict with those of the Class. As such, Plaintiffs are adequate Class Representatives.
- L. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Class treatment will permit a large number of similarly situated persons to prosecute their claims in a single forum simultaneously and without unnecessary duplication and effort that would result from numerous individual actions.
- M. Individual litigation of the facts of all the individual cases would unduly burden the courts. Individual litigation would further present a potential for inconsistent or contradictory judgments, and would increase the delay and expense to all parties and the Court system. Further, the expense and burden of individual litigation make it impossible for Class Members to individually redress the wrongs alleged herein. In contrast, a class action presents far fewer management difficulties and provides the benefit of single adjudication under the comprehensive supervision of a single court. Notice of pendency of the action and any resolution thereof can be provided to proposed Class Members by publication and/or other means.
- N. This action is maintainable as a class action under Rule 23(b)(2) since the unlawful actions of Defendants, as alleged herein, have been taken on grounds

equally applicable to all members of the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

- O. This action is also maintainable as a class action under Rule 23(b)(3), as common questions of law and fact described above predominate over any questions affecting only individual members, the desirability of concentrating the claims in one forum, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.
- P. All allegations and claims are pled in the alternative to the extent required for proper construction under applicable state or federal law.

#### **JURISDICTION AND VENUE**

- 26. This Court has federal question jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and related law, and has original jurisdiction over this matter pursuant to 28 U.S.C. § 1343(a)(3). Plaintiffs have commenced this action pursuant to 42 U.S.C. § 1983, Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and related federal laws to recover damages, including the costs of this suit and reasonable attorney's fees, sustained by Plaintiffs and the Class Members by reason of Defendants' violations of federal law and for injunctive relief as more fully set forth herein.
- 27. This Court has supplemental jurisdiction over the claims in this Amended Complaint that arise under state law pursuant to 28 U.S.C. § 1367(a) because the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

28. Venue in the District of Minnesota is appropriate pursuant to 28 U.S.C. § 1391, as the conduct alleged herein occurred in this District.
29. The Jensens, Brinker/Allen and Jacobs bring this suit on behalf of Bradley, Thomas and Jason, respectively, under the authority of Minnesota Statutes, section 540.08 and Federal Rule of Civil Procedure 17(c).

### **GENERAL ALLEGATIONS**

#### **METO**

30. DHS developed METO pursuant to a directive of the Minnesota legislature, codified at Minnesota Statutes, section 252.025, subd. 7, for the purpose of serving “Minnesotans who have developmental disabilities and exhibit severe behaviors which present a risk to public safety. [METO] must provide specialized residential services in Cambridge and an array of community support services statewide.”
31. Despite the requirement of Section 252.025, subd. 7 requiring METO to serve persons “which present a risk to public safety,” the Minnesota Department of Management and Budget published an Agency Profile of DHS in its 2010-11 Biennial Budget Report, p. 169 (December 2008) indicating that the population served by METO includes “persons who are committed as developmentally disabled who *may* pose a public safety risk.” (emphasis in original), indicating that DHS may be seeking funding for services beyond its statutory authority.
32. At all times material, METO was developed and operated under the Forensic Services office of the State Operated Services program under the Chemical and Mental Health Services Division of DHS, which is an agency of the State of Minnesota.

33. METO is licensed by the Licensing Division of DHS as an Intermediate Care Facility/Developmentally Disabled (ICF/DD).
34. At all times material, Defendants are responsible for all aspects of the operation of METO and/or for the health, safety and well being of Bradley, Thomas, Jason and Class Members.
35. METO is an institution within the meaning of 42 U.S.C. § 1997(1).
36. DHS, as the operator of METO, is a public entity as defined in the ADA and implementing regulations, 42 U.S.C. § 12131(1), 28 C.F.R. 35, in that it is a state or local governmental entity or agency thereof.
37. DHS, as the operator of METO, is a program or activity as defined in of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(b)(1)(A), in that it is a department, agency, special purpose district, or other instrumentality of a state or local government.
38. At all times material, METO received federal funds and was a participant in the Medicaid system, rendering METO subject to the Patient Bill of Rights, including the right to be free from seclusion and/or restraints. 42 C.F.R. 482.13(e).
39. Through online published material, METO represented:

METO serves the public interest by providing comprehensive treatment to individuals with mental retardation<sup>1</sup> and co-occurring conditions to promote safe and sustainable return to their communities of origin.

A statewide program, METO has the capacity to provide specialized residential services for up to 48 clients on the Cambridge campus. The program makes use of intense levels of staff supervision and internal client management procedures to maintain security. Residential units have been constructed to be as homelike as possible, permitting clients to maintain or improve daily living skills that facilitate development of self-esteem, acceptance of personal responsibility, and eventual reintegration into the community.

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<sup>1</sup> The appropriate term is “developmental disability.” Minn. Stat. § 15.001.

Treatment for individuals who have committed criminal offenses: Treatment focuses on teaching alternatives to aggression, enhancing self-concept and learning to accept personal responsibility.

Treatment for aggressive/assaultive and other challenging behaviors: Treatment includes behavior management/therapy.

40. In Minnesota, the term “Rule 40” refers to Minnesota Rules 9525.2700 - .2810, promulgated pursuant to Minnesota Statute, section 245.825, that govern the use of aversive and deprivation procedures such as seclusion and restraints.
41. Rule 40 provides standards that govern the use of aversive and deprivation procedures with persons who have a developmental disability and who are served by a license holder licensed by the Commissioner of DHS, including METO.
42. Upon information and belief, the METO facility has two Seclusion Rooms, which are used to seclude patients in direct violation of Rule 40 and federal law. *See* Minn. Stat. § 245.825; Minn. R. 9525.2730(2)(D); *see also* 42 C.F.R. 482.13(e).
43. Rule 40 does not encourage or require the use of aversive and deprivation procedures, but rather encourages the use of positive intervention approaches as an alternative to aversive or deprivation procedures.
44. Defendants made false representations to Plaintiffs regarding the use and scope of Rule 40 procedures and psychotropic/neuroleptic drugs.
45. At all times material, Defendants’ practices subjected Bradley, Thomas, Jason and Class Members to repeated, excessive and improper use of seclusion methods and restraints, including law enforcement-type mechanical devices in the form of metal handcuffs and leg hobbles, including leg irons, shackles and/or nylon straps.

46. Upon information and belief, Defendants routinely subjected Bradley, Thomas, Jason and Class Members to seclusion methods veiled as “time outs” or similar methods, but which had little, if any, beneficial therapeutic effects and were used solely as punishment.
47. Upon information and belief, Defendants also secluded some Class Members by depriving them of visits with their families.
48. Upon information and belief, a stripped female was placed in a Seclusion Room despite the ability for persons to look into the room through a viewing window on the room’s access door.
49. Defendants used or allowed the use of restraints, including metal handcuffs and leg hobbles, to restrain Bradley, Thomas, Jason and Class Members when behaviors were displayed that Defendants summarily and routinely deemed to be antecedent to more severe self injurious behaviors but were not determined to cause imminent injury and did not constitute an emergency.
50. Defendants used or allowed the use of restraints as an improper and routine behavior modification technique to correct behaviors, which were manifestations of their disabilities.
51. Defendants used restraints, including metal handcuffs and/or leg hobbles for behaviors that did not pose a threat of imminent danger to patients or others, such as spitting, vomiting, urinating, laughing, hand washing, and other behaviors.
52. Defendants’ use or allowance of restraints, including metal handcuffs and leg hobbles, including leg irons, shackles and/or nylon straps, was a routine treatment modality rising to the level of a pattern of practice, which grossly violated generally accepted best practice standards and the standard of care.

53. Defendants failed to provide Bradley, Thomas, Jason and Class Members with training and skills to ensure their safety and to facilitate their ability to function free from bodily restraints. Defendants failed to provide Bradley, Thomas, Jason and Class Members training and skills that would significantly reduce the need for restraints or the likelihood of self-injurious conduct.
54. Accepted best practice standards and the standard of care indicate restraints should not be used, and that positive behavioral supports, which include assessing the purpose of the behaviors and determining positive alternatives for individuals to employ, is the preferred approach. If restraints are used, they must be for situations where there is imminent risk of harm to the patient or others, and only for as long as the risk is present.
55. Defendants failed to use or require the use of positive intervention techniques or other methods of least restriction to modify behavior and to ensure Bradley, Thomas, Jason and Class Members were free from undue, unreasonable, cruel and inhumane restraints, and provided with reasonably safe conditions of confinement, personal security, reasonable protection from harm, adequate care and to otherwise protect Bradley, Thomas, Jason and Class Members from harm.
56. Defendants failed to assess Bradley, Thomas, Jason and Class Members to ascertain whether adequate treatment, support and services were received in the most integrated setting appropriate to their individual needs.
57. Defendants' use of seclusion methods and restraints, including law enforcement-type mechanical devices in the form of metal handcuffs and leg hobbles, violated accepted professional standards of care, thereby causing Bradley, Thomas, Jason and Class Members to suffer damages and exposing them to significant risk of harm.

58. As early as 1949, Minnesota officials recognized the barbarism associated with the use of restraints when administrators at the Moose Lake State Hospital discontinued the use of restraints and chose to treat patients humanely and therapeutically rather than through the threat of restraints. Moose Lake State Hospital was a part of the State Operated Services division of the DHS, just as METO is today.
59. On January 21, 2009, Dr. Read Sulik, Assistant Commissioner for Chemical and Mental Health Services for DHS, who has authority over METO, testified before the Minnesota Senate, Finance Health and Human Services Budget Division committee regarding the lack of oversight and staff training at METO. Dr. Sulik made the following representations:
- In response to a question regarding perceived lack of oversight at METO, which was apparent from the Ombudsman investigation report regarding METO entitled “*Just Plain Wrong*,” Dr. Sulik stated he had revised the hierarchical reporting structure so METO’s Clinical Director, among others, would now report to him directly, and he would now receive the administrative, financial and clinical reports to ensure he was being updated on the clinical needs and operations of METO. He further stated historically there had never been a Clinical Director reporting to the Assistant Commissioner at State Operated Services.
  - In response to a question regarding METO staff’s lack of training, Dr. Sulik stated: “I don’t want to indicate that the skill sets are missing, but they are not at the level of competence and acquisition that I aspire to get to within all of our programs. . . .”
60. In an October 1, 2008 article in the Isanti County News, after agreeing with the Ombudsman’s investigative findings related to the use of restraints at METO, DHS’ spokesperson was quoted as saying the “use of restraints within this program to safeguard patients and staff is essential.”
61. In contrast, at public meetings on July 7, 2009, Dr. Sulik stated he wanted to eliminate the use of seclusion and restraints on METO patients, that current efforts exist to reduce



the use of seclusion and restraints, and that METO could treat patients without using seclusion and restraint, but that METO staff would require proper training in order to do so. Dr. Sulik further indicated he wanted to transfer employee skill sets to utilize positive behavioral interventions.

62. In further comments, Dr. Sulik stated METO's placement in the DHS Forensic Services office may have clouded METO's original purposes and goals internally and externally. Dr. Sulik also stated there are multiple levels of criminal and civil commitments to METO.
63. Dr. Sulik recognized METO had been used inappropriately as an acute psychiatric facility, and that some individuals had been inappropriately placed in METO who did not exhibit behavioral aggression or acute psychiatric issues.
64. Upon information and belief, METO may be increasing the use of chemical restraints (i.e., medications) to replace or supplement its reduced use of mechanical restraints.

**Bradley**

65. Bradley is a person with developmental disabilities and has been diagnosed with Autism, hyperkinesias, an anxiety disorder and a possible psychosis condition; intellectual and adaptive functioning tests place him in the lower extreme (lower than 0.1% of the population).
66. Bradley's disabilities materially or substantially affect one or more major life activity.
67. Bradley is an individual with a disability as defined by the Americans with Disabilities Act (ADA), 42 U.S.C. § 12102(2), and is a qualified individual with a disability as defined in Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 705(20).

68. Bradley was civilly committed as developmentally disabled and mentally ill to METO per court Order.
69. Bradley was a patient of METO from November 16, 2006, through November 8, 2007.
70. Defendants subjected Bradley to the use of mechanical restraints, including metal handcuffs and leg hobbles, on at least 70 occasions; Class Members were subjected to mechanical restraints as well, sometimes hundreds of times per year.
71. On repeated occasions, Defendants subjected Bradley and Class Members to seclusion methods, including impeding the Jensens from having contact with Bradley (e.g., refusing phone contact near the Thanksgiving Holiday) and secluding him in his room without the choice to leave for non-threatening behavior.
72. Bradley lacked the capacity to consent to the use of Rule 40 procedures, including the use of mechanical restraints and psychotropic/neuroleptic drugs.
73. Defendants knew or should have known Bradley lacked the capacity to consent to the use of Rule 40 procedures and psychotropic/neuroleptic drugs.
74. Although Bradley lacked the capacity to consent to the use of Rule 40 procedures and/or the use of psychotropic/neuroleptic drugs, which was known or should have been known to Defendants, Defendants caused Bradley to sign consent forms as his own legal representative prior to the Jensens becoming his legal guardians.
75. Defendants implemented Rule 40 procedures pursuant to the defective consent of Bradley.
76. Subsequent to their appointment as Bradley's guardians, Defendants coerced the Jensens and other guardians similarly situated through threats of retaliation and fraudulent conduct, including through Defendants' silence when they had an

obligation to disclose, into consenting to certain purported Rule 40 seclusion and mechanical restraint procedures.

77. Once Bradley transferred out of METO to a community based residence, he was afraid to leave his new home to attend day programming due to a fear of having to return to METO; Bradley continues to express fear of being returned to METO.

**Thomas**

78. Thomas is a person with developmental disabilities and has been diagnosed with mild to moderate developmental disability, Fetal Alcohol Syndrome, Intermittent Explosive Disorder, an anxiety disorder and depressive disorder; intellectual and adaptive functioning tests place him in the lower extreme (lower than 0.1% of the population).
79. Thomas' disabilities materially or substantially affect one or more major life activity.
80. Thomas is an individual with a disability as defined by the ADA, and is a qualified individual with a disability as defined in Section 504.
81. Thomas was civilly committed as developmentally disabled to METO per court Order.
82. Thomas was a patient of METO from approximately July 13, 2007, through December 19, 2008.
83. Thomas was mechanically restrained by METO staff on several occasions, including being put in "steel cuffs" and leg hobbles for 50 minutes following a "group takedown"; Thomas cried during the restraint, stating "I don't belong here."
84. As a result of the use of restraints and group takedowns, Thomas suffered several physical injuries, including abrasions on the right and left side of his forehead, cuts on his wrists, and his right ear being banged on the ground resulting in blood in his ear canal.

85. METO staff also threatened James Brinker that Thomas would never be allowed to have another family visit if he was not returned to METO on Christmas Day 2007 despite METO's social worker specifically arranging with James Brinker that Thomas could return the day after Christmas.

**Jason**

86. Jason is a person with developmental disabilities and has been diagnosed with mild developmental disability, Klinefelter's Syndrome, major depression disorder, Dysthymia, ADHD and Schizoaffective Personality Disorder.

87. Jason's disabilities materially or substantially affect one or more major life activity.

88. Jason is an individual with a disability as defined by the ADA, and is a qualified individual with a disability as defined in Section 504.

89. Jason was civilly committed to METO per court Order, and was a patient of METO from approximately May 2006 through March 2009.

90. Jason was restrained by METO staff on his first day at METO and was subsequently restrained hundreds of times with handcuffs and leg hobbles for benign behaviors such as washing his hands too much.

91. METO staff restrained Jason by strapping his wrists and ankles to a chair or bed.

92. As a result of the use of handcuffs, Jason suffered several physical injuries.

93. On one occasion, Jason repeatedly told METO staff his arm hurt while being restrained with metal handcuffs and leg shackles; METO staff refused to provide him with medical attention despite Jason's repeated requests and lifted his arms up in the back during use of the handcuffs. When METO staff finally sought medical care for him the next day, it was discovered Jason had suffered a broken arm from the restraints. An air cast was

placed on Jason's arm. Despite the placement of the air cast, METO staff placed Jason in handcuffs the day after he was seen by the doctor.

94. On another occasion, Jacobs authorized a root canal procedure for Jason. His dentist prescribed pain medication, but METO staff refused to allow Jason to take the medication until a review by METO doctors. Subsequently, METO doctors refused to allow the pain medication, permitting Jason to take only over-the-counter aspirin.
95. Jason was put in a Seclusion Room by METO staff for hours at a time as a form of punishment.
96. When Jacobs tried to visit her son at METO pursuant to a pre-arranged authorized visit, METO staff refused to allow her to see Jason, claiming she was not authorized, although the visit was authorized by METO. METO staff further refused to check with the appropriate staff member to confirm the authorization. After refusing to allow Jason a visit from his mother, METO staff restrained Jason and secluded him in his room as a means to punish him.
97. While a patient of METO, DHS officials transferred Jason to the Minnesota Security Hospital in St. Peter (MSH), a secure treatment facility designed to serve persons committed as mentally ill and dangerous or transferred from the prison system due to mental illness. *See* Minn. Stat. § 253.20. Upon information and belief, Jason and other Subclass Members with developmental disabilities were placed in the general forensic population at MSH rather than a specialized developmental disability unit, which may or may not exist, over the objections of the Ombudsman and others. Upon information and belief, MSH is not capable of providing proper care and treatment necessary to meet the

needs of persons with developmental disabilities. Elizabeth Jacobs, Jason's mother and legal guardian, was not given notice of Jason's transfers to MSH.

98. METO patients who were transferred from METO to the Minnesota Security Hospital, form a Subclass of Class Members whose rights were further violated by such a transfer in violation of state law.
99. Other Class Members receiving services through METO are persons with developmental disabilities, persons with acute psychiatric conditions, persons diverted from criminal courts, and others.

**Minnesota Office of Ombudsman for Mental Health and Developmental Disabilities**  
**Investigation**

100. In 2007 and 2008, the Minnesota Office of Ombudsman for Mental Health and Developmental Disabilities investigated the treatment provided at METO in response to a complaint regarding the use of physical restraints on patients with developmental disabilities, including metal, law enforcement style handcuffs and leg hobbles.
101. On September 18, 2008, the Ombudsman's Office published an extensive report entitled "*Just Plain Wrong*" detailing its investigation, findings, conclusions and recommendations. What the Ombudsman found was shocking:

Documents in individual records revealed that people were being routinely restrained in a prone face down position and placed in metal handcuffs and leg hobbles. In at least one case, a client that the metal handcuffs and leg hobbles were secured then together behind the person, further immobilizing the arms and legs, reported it to the Ombudsman staff. Some individuals were restrained with a waist belt restraint that cuffed their hands to their waist. An individual with an unsteady gait was routinely placed in this type of restraint, putting that person at risk of injury if they should fall, as they would not be able to use their arms or hands to break that fall. Others were being restrained on a restraint board with straps across their limbs and trunk. METO policies stated that a person was not to be restrained for more than 50 minutes. Ombudsman staff found numerous examples of documented incidents where after 50

minutes in a restraint, staff would continue the restraint but document it on a different restraint use form, sometimes with no indication that it was a continuation of the previous restraint.

Documentation revealed that in most cases where restraints were used, the person was calm and cooperative about going into the restraint but began to struggle, cry and yell once they were in the restraints. In some cases, clients appeared to be conditioned to “assume the position”<sup>2</sup> for the application of restraints where they would lie on the floor and put their hands behind their back without resistance. One client who was regularly restrained with metal handcuffs and leg irons stated that once the restraints were on he/she began to experience discomfort which led to crying, yelling and struggling against the restraints. The METO policy stated that a person had to be calm for 15 minutes before they could be released from restraints.

102. The Ombudsman further reported, in part:

- A. METO was a program that was established with a good foundation and lofty goals but had slid into a pattern of practice that used restraints as a routine treatment modality.
- B. Generally accepted best practice standards indicated that restraints should only be used in a situation where there is imminent risk to the patients or others and only for as long as the risk is present.
- C. Current best practice standards focused on positive behavioral supports, which included assessing the purpose of the behaviors and finding positive alternatives for the individual to employ.
- D. Sixty three percent (63%) of METO patients at the time of the review, had been restrained and the majority of those had been restrained multiple times; one patient had been restrain 299 times in 2006 and 230 times in 2007.
- E. Reasons for restraining patients included touching a pizza box.
- F. No alternatives were attempted to avoid the use of restraints.
- G. The length of time some patients were in restraints exceed METO’s own guidelines.
- H. The agencies who had protective obligations for METO patients or responsibility to serve as a checks and balances over the actions of the program, failed to protect the patients or turned a blind eye to the problem.

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<sup>2</sup> “Assume the position” procedures are prohibited. Minn. R. 9525.2730(2)(C).

103. The Ombudsman concluded, in part, that:
- A. There is an abundance of research and evidence that positive practices can work to alter challenging behaviors.
  - B. Positive Interventions are the generally accepted standard of care for persons with developmental disabilities.
  - C. There is a legitimate place in the spectrum of care for a facility envisioned by METO's empowering legislation.
  - D. METO currently has a program-wide practice of routine use of restraints employed as a basic treatment modality. This practice embodies a deeply ingrained philosophy of care.
  - E. Staff members of the facility believe that their clients will not get better if they do not use this form of treatment.
  - F. The practice using restraints is practiced widely and is anticipated with every admission. This is evidenced by the standard check off on the admission form that there are no contraindications to the use of restraints.
  - G. The facility agreed to look for alternative restraint devices that are safe and more acceptable in a health care setting.
  - H. Inappropriate use of restraints can constitute abuse under Minnesota's Vulnerable Adult Act.
  - I. It is the opinion of the Ombudsman that certain practices have violated the human and civil rights of some clients.
104. As a result of the investigation, the Ombudsman recommended in part:
- A. METO should immediately discontinue the use of restraints in any form except when [imminent] risk of harm is present.
  - B. All staff should receive training in positive behavioral programming, rights of clients, documentation and other training as identified in any program evaluation.
  - C. METO should establish an overarching approach to the use of restraints that applies to all clients regardless of what type of licensing covers any given unit. Human rights are universal and every client has the right to be treated with dignity and respect.



- D. County case managers should become more active participants in their client's plan of care and should be encouraged to challenge practices to assure that all reasonable methods have been tried before any restraint is to be used.

105. In the Report's closing comments, the Ombudsman stated:

It appears as if the METO program has lost sight of its original vision and mission. Minnesota has fallen back on the failed practices of the past that led to the necessity of a Federal Consent Decree. Without immediate and substantive change, the state is at risk of further federal intervention. METO clients deserve to receive treatment and supports that fully incorporate them into the fabric of our communities as equal and participating members. Those who know and work with these citizens know how much they contribute and how much they enrich our lives. These citizens deserve better and the taxpayers of Minnesota deserve more effective use of their resources.

106. The Ombudsman found many individuals were adversely affected by METO policies and procedures regarding the use of mechanical restraints.

107. As further background, the Report also indicated "METO was partially the result of the closure of the Cambridge State Hospital after the state entered into a Federal Consent Agreement. The Agreement was the outcome of a lengthy Federal litigation about the conditions of care and treatment of the residents of the Hospital."

108. A copy of the Ombudsman's Report is attached as Exhibit 1 and made a part of this Amended Complaint as if fully stated herein.

109. By letter dated August 8, 2008, in response to a draft of the Ombudsman's Report, DHS represented the following regarding the continued use of restraints:

In February 2008, METO established (1) a uniform policy and procedure to be applied to all units, regardless of the type of applicable licensing regimen, regarding the use of restraints, and (2) an aggressive goal and timetable that all staff will be trained by March 1, 2008, and that goal was met. Under the new policy and procedure, METO has discontinued the use of restraints in any form except when imminent risk of harm is present.

110. Upon information and belief, METO continues to use mechanical restraints and restraints in the form of chemicals, in contravention of its stated policy that restraints would not be used “in any form except when imminent risk of harm is present.”

**Minnesota Department of Health Investigations**

111. On January 10 and 11, 2007, the Minnesota Department of Health (MDH), Office of Health Facility Complaints (OHFC), made unannounced visits to METO to investigate an alleged violation of the Conditions of Participation for Intermediate Care Facilities for Persons with Developmental Disabilities, specifically related to the Condition of Client Behavior and Facility Practice (42 C.F.R. 483.450), for Intermediate Care Facilities for the Developmentally Disabled. The scope of the investigation included not only persons residing in ICF/DD beds, but also those persons residing in non-certified beds.
112. OHFC investigators found that fifteen “Conditions” under the Federal Regulations governing ICF/DD facilities were not met by METO.
113. A copy of the OHFC Statement of Deficiencies and Plan of Correction related to the January 10 and 11, 2007, investigation, is attached hereto at Exhibit 1, Appendix B, and made a part of this Amended Complaint as if fully stated herein.
114. On February 28, 2008, OHFC issued a public Investigative Report, which included the following findings:
- A. METO failed to ensure patients were free from unnecessary physical restraints and/or drugs.
  - B. METO failed to implement restraints without causing harm to the patient.
  - C. METO failed to revise individual program plans as necessary related to behaviors.
  - D. METO failed to incorporate alternative interventions into patients’ individual program plans in place of restraints.

- E. METO failed to utilize restraints in a manner that would reduce the need for restraints and eliminate the behavior.
115. A copy of the OHFC Investigation Report is attached hereto as Exhibit 2 and made a part of this Amended Complaint as if fully state herein.
116. An administrative employee who was interviewed during the OHFC investigation stated injuries related to restraint use included redness from handcuffs, bumps, bruises, rug burns and at least one broken arm.
117. On March 4 and 5, 2008, the OHFC conducted another unannounced full survey of METO. A Statement of Deficiencies and Plan of Correction was issued, which found METO was still not compliant with federal and state law, and deficiencies previously found had not been corrected, including that METO continued to fail to ensure patients were free from unnecessary physical restraints and/or drugs.
118. A copy of the OHFC Statement of Deficiencies and Plan of Correction related to the March 4 and 5, 2008, investigation, is attached hereto at Exhibit 3 and made a part of this Amended Complaint as if fully stated herein.

**DHS Licensing Investigation and Correction Order**

119. The Minnesota Department of Human Services, Division of Licensing (DHS Licensing) issued an Investigation Memorandum on April 4, 2008, regarding complaints about the use of controlled procedures at METO, in particular, the use of mechanical and manual restraints.
120. DHS Licensing found the following violations of the use of controlled procedures or restraints and/or Minnesota Rules 9525.2700 - .2810:
- A. METO's Individual Program Plans (IPPs) developed for the use of controlled procedures, did not meet the required standards for assessment, content, and review, including the failure to obtain a report from the physician on whether

there were existing medical conditions that could result in the demonstration of behavior for which a controlled procedure may be proposed or should be considered in the development of an IPP for controlled procedure use.

- B. METO staff use controlled procedures for staff convenience and not based on the standards and conditions for use of the procedures; patients were told if they did not stop engaging in a behavior, a controlled procedure would be used and no efforts to teach an alternative behavior were used.
  - C. METO staff implemented controlled procedures on an emergency basis for staff convenience without the patients' behavior meeting the criteria for use (i.e., immediate intervention was needed to protect the person or others from physical injury or to prevent severe property damage that is an immediate threat to the physical safety of the person or others).
  - D. METO failed to complete the required review and reporting when a controlled procedure was used on an emergency basis.
121. A copy the DHS Licensing Investigation Memorandum is attached at Exhibit 4 and made a part of this Amended Complaint as if fully stated herein.
122. DHS Licensing issued a Correction Order to METO that contained six citations, which required corrective action, including the following:
- A. Failure to ensure that all the required standards and conditions for the use of controlled procedures were met.
  - B. Failure to obtain the required assessment information on persons who had a controlled procedure as part of their IPP.
  - C. Failure to ensure necessary conditions were met when an emergency use of a controlled procedure was implemented on a patient.
  - D. Failure to implement METO's own policy on the emergency use of controlled procedures.
123. A copy the DHS Licensing Correction Order is attached at Exhibit 5 and made a part of this Amended Complaint as if fully stated herein.

**Review by METO Retained Experts**

124. Following the investigations by the OHFC and DHS Licensing, DHS stated “the METO program engaged a group of national experts in the treatment and support of persons with mental illness/developmental disabilities, whose behaviors present a risk to the public, to complete a review of the METO program.” DHS stated “[t]he purpose of the review was to compare the practices employed by the Department’s METO program with nationally accepted best practices.”
125. Recognizing METO’s ongoing use of mechanical restraints, and noting METO had tried to reduce its use of restraints, the experts stated “[t]he use of mechanical restraints is not regarded as best practice in the disability field,” that “[s]eeking alternative approaches to assure safety during physical behavioral crisis is advisable,” and recommended that METO “[o]nly consider the use of restraint for times when the client is a danger to him/her self or others, all other pro-active measures have been tried and without an intervention someone will get hurt.”
126. The experts found 88% of METO patients were on antipsychotic medication, and 25% of the doses exceeded the published FDA maximum.
127. At all times material, as more fully described in the foregoing allegations, Defendants acted under color of state law.

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**COUNT I**  
**42 U.S.C. § 1983 – FOURTEENTH AMENDMENT**

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128. Plaintiffs re-allege the allegations set forth in the preceding paragraphs as if fully set forth herein.
129. Defendants are obligated to operate and implement METO and safeguard patients in the METO program, including Bradley, Thomas, Jason and Class Members, in a manner that

does not infringe upon their federal and civil rights, including rights granted pursuant to the Fourteenth Amendment to the Constitution of the United States (Fourteenth Amendment), and by other federal law and/or state law.

130. Defendants acted under color of state law and engaged in an official policy and/or custom of restraining Bradley, Thomas, Jason and Class Members using improper seclusion methods and restraints, including law enforcement-type mechanical devices in the form of metal handcuffs and leg hobbles, including leg irons, shackles and/or nylon straps, violating their federal rights as protected by the Fourteenth Amendment, as enforced through 42 U.S.C. § 1983 (Section 1983).
131. Defendants acted in clear violation of well-settled law of which reasonable persons would have been aware.
132. Defendants' acts and omissions deprived Plaintiffs and Class Members of rights, privileges, or immunities secured or protected by the Fourteenth Amendment and federal law, including but not limited to the right to reasonably safe conditions of confinement, personal security, freedom from undue and unreasonable bodily restraints, reasonable protection from harm, and adequate care, and freedom from threats, coercion and the right of due process causing Plaintiffs damages in an amount to be proven at trial, including attorney's fees and costs.
133. To the extent discovery in this action reveals METO is a program assisted with funds under the Developmental Disability Assistance and Bill of Rights Act (DD Act), Plaintiffs reserve the right to amend this Amended Complaint to assert claims based upon violation(s) of the DD Act's contingency requirements to receive funds thereunder. Specifically, Defendants may have failed to have in place an individual written

habilitation plan for Bradley, Thomas and Jason, and, in the alternative, may have failed to have the individual habilitation plan in effect.

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**COUNT II**  
**42 U.S.C. § 1983 – EIGHTH AMENDMENT**

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134. Plaintiffs re-allege the allegations set forth in the preceding paragraphs as if fully set forth herein.
135. Defendants are obligated to operate and implement METO and safeguard patients in the METO program in a manner that does not infringe upon their federal rights, including for Class Members rights guaranteed pursuant to the Eighth Amendment to the Constitution of the United States (Eighth Amendment), and by other federal law and/or state law.
136. Defendants acted under color of state law and engaged in an official policy and/or custom of restraining METO patients using improper seclusion methods and restraints, including law enforcement-type mechanical devices in the form of metal handcuffs and leg hobbles, including leg irons, shackles and/or nylon straps, violating the federal rights of Class Members to be free from cruel and unusual punishment as protected by the Eighth Amendment, as enforced pursuant to 42 U.S.C. § 1983.
137. Defendants used restraints and seclusion methods, as alleged herein, to punish patients of the METO program.
138. Defendants acted in clear violation of well-settled law of which reasonable persons would have been aware.
139. Defendants' acts and omissions deprived Class Members of their rights, privileges, or immunities secured or protected by the Eighth Amendment and federal law, including but not limited to the right to be free from cruel and unusual punishment, causing damages in an amount to be proven at trial, including attorney's fees and costs.

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**COUNT III**  
**VIOLATION THE CONSTITUTION OF THE STATE OF MINNESOTA (ART. I, SEC. 7)**

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140. Plaintiffs re-allege by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.
141. Defendants' acts and omissions deprived Plaintiffs and Class Members of rights, privileges, or immunities secured or protected by the Article I, Section 7 of the Constitution of the State of Minnesota, including but not limited to the right to reasonably safe conditions of confinement, personal security, freedom from undue and unreasonable bodily restraints, reasonable protection from harm, and adequate care, and freedom from threats and coercion, causing Plaintiffs and Class Members damages in an amount to be proven at trial, including attorney's fees and costs.
142. Defendants acted in clear violation of well-settled law of which reasonable persons would have been aware.

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**COUNT IV**  
**VIOLATION THE CONSTITUTION OF THE STATE OF MINNESOTA (ART. I, SEC. 5)**

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143. Plaintiffs re-allege the allegations set forth in the preceding paragraphs as if fully set forth herein.
144. Defendants acted under color of state law and engaged in an official policy and/or custom of restraining Class Members with improper seclusion methods and restraints, including law enforcement-type mechanical devices in the form of metal handcuffs and leg hobbles, including leg irons, shackles and/or nylon straps, violating certain Class Members' rights to be free from cruel and unusual punishment as guaranteed pursuant to Article I, Section 5 of the Constitution of the State of Minnesota, causing Plaintiffs and



Class Members damages in an amount to be proven at trial, including attorney's fees and costs..

145. Defendants used restraints and seclusion methods, as alleged herein, to punish patients of the METO program.
146. Defendants acted in clear violation of well-settled law of which reasonable persons would have been aware.

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**COUNT V**  
**DECLARATORY RELIEF**  
**MINN. STAT. § 245.825 AND MINN. R. 9525.2700 - .2810 VIOLATE STATE AND FEDERAL**  
**CONSTITUTIONS**

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147. Plaintiffs re-allege the allegations set forth in the preceding paragraphs as if fully set forth herein.
148. Minnesota Statutes, section 245.825 (Section 245.825) and rules promulgated by DHS under the authority of Section 245.825, published at Minnesota Rules 9525.2700 - .2810, (Rules 9525.2700 - .2810), govern the use of aversive and deprivation procedures, including permitting the use of seclusion and mechanical restraints, in licensed facilities serving persons with developmental disabilities, including METO.
149. Section 245.825, and Rules 9525.2700 - .2810, are unconstitutional and void in that they violate the fundamental guarantee of freedom from cruel and unusual punishment as guaranteed by the Eighth Amendment and by Article I, Section 5 of the Constitution of the State of Minnesota.
150. Section 245.825 and Rules 9525.2700 - .2810 are further unconstitutional and void in that they violate the fundamental right to reasonably safe conditions of confinement, personal security, freedom from undue and unreasonable bodily restraints, reasonable protection from harm, and adequate care, and freedom from threats and coercion as guaranteed and

protected by the Fourteenth Amendment and by Article I, Sections 7 of the Constitution of the State of Minnesota.

151. Plaintiffs seek a declaration from this Court that Section 245.825 and Rules 9525.2700 - .2810 are unconstitutional under the U.S. and Minnesota Constitutions and prohibiting the State of Minnesota, DHS, METO and any others from invoking, using or enforcing in any manner or for any purpose the same.

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**COUNT VI**  
**VIOLATION OF TITLE II OF THE AMERICANS WITH DISABILITIES ACT**

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152. Plaintiffs re-allege the allegations set forth in the preceding paragraphs as if fully set forth herein.
153. Defendants are obligated to provide treatment, support, and services to patients of METO consistent with the Americans with Disabilities Act (ADA) and implementing regulations. 42 U.S.C. § 12101 *et seq.*, 28 C.F.R. 35.
154. Defendants' egregious, flagrant and inhumane acts and omissions violate Title II of the ADA and implementing regulations. 42 U.S.C. § 12101 *et seq.*, 28 C.F.R. 35.
155. As a result of Defendants' acts and omissions, Bradley, Thomas, Jason and Class Members were deprived of rights, privileges, or immunities secured and protected by federal law, and caused irreparable harm.
156. As a result of Defendants' acts and omissions, Bradley, Thomas, Jason and Class Members were denied access to the full utilization and benefit of treatment services based on disability status.
157. As a result of Defendants' practices, Bradley, Thomas, Jason and Class Members were deprived equal access to a public entity's services, programs, and activities and were

otherwise adversely affected as a member of the public accessing METO's programs and activities.

158. Defendants conduct caused Plaintiffs and Class Members damages in an amount to be proven at trial, including attorney's fees and costs.

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**COUNT VII**  
**VIOLATION OF SECTION 504 OF THE REHABILITATION ACT**

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159. Plaintiffs re-allege by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.
160. Defendants' egregious, flagrant and inhumane acts and omissions violate Section 504 of the Rehabilitation Act and implementing regulations. 29 U.S.C. § 794, 34 C.F.R. 104.
161. As a result of Defendants' acts and omissions, Bradley, Thomas, Jason and Class Members were deprived of rights, privileges, or immunities secured and protected by federal law, and caused irreparable harm.
162. As a result of Defendants' acts and omissions, Bradley, Thomas, Jason and Class Members, by reason of disability, were excluded from the participation in, denied the benefits of, or subjected to discrimination while patients at METO.
163. Defendants' conduct caused Plaintiffs and Class Members damages in an amount to be proven at trial, including attorney's fees and costs.

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**COUNT VIII**  
**VIOLATION OF THE MINNESOTA HUMAN RIGHTS ACT**

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164. Plaintiffs re-allege by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.
165. Defendants are obligated to operate METO in a manner free from discrimination and that does not infringe upon the rights of individuals confined to METO as protected by the

Minnesota Human Rights Act (MHRA), Minn. Stat. § 363A *et seq.*, and other applicable law.

166. Defendants' egregious, flagrant and inhumane acts and omissions constitute a pattern or practice that violated Bradley, Thomas, Jason and Class Members' state rights as protected by MHRA, including freedom from discrimination based on disability.
167. The disabilities of Bradley, Thomas, Jason and Class Members toll the accrual of their claims under MHRA. *See* Minn. Stat. § 541.15.
168. Defendants' conduct caused Plaintiffs and Class Members damages in an amount to be proven at trial, including attorney's fees and costs.

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**COUNT IX**  
**NEGLIGENCE *PER SE***  
**42 C.F.R. 482.13**

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169. Plaintiffs re-allege by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.
170. At all times material, METO participated in the Medicaid program thereby subjecting METO to the federal patients' bill of rights, codified at 42 C.F.R. 482.13.
171. Defendants are obligated to operate and implement METO consistent with 42 C.F.R. 482.13, sub. 3, which provides "All patients have the right to be free from physical or mental abuse, and corporal punishment. All patients have the right to be free from restraint or seclusion, of any form, imposed as a means of coercion, discipline, convenience, or retaliation by staff."
172. Bradley, Thomas, Jason and Class Members are persons within the intended protection of 42 C.F.R. 482.13, subp. 3.

173. Defendants failed to use or require the use of positive approaches as an alternative to seclusion or restraint procedures, and otherwise failed to comply with 42 C.F.R. 482.13 as identified herein.
174. Defendants' egregious, flagrant and inhumane acts and omissions constitute a pattern or practice violating 42 C.F.R. 482.13.
175. The harm suffered by Bradley, Thomas, Jason and Class Members is of the type 42 C.F.R. 482.13 was intended to prevent.
176. Defendants' conduct caused Plaintiffs and Class Members damages in an amount to be proven at trial, including attorney's fees and costs.

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**COUNT X**  
**NEGLIGENCE *PER SE***  
**MINNESOTA STATUTES, SECTION 245.825 AND RULE 40/MINN. R. 9525.2700 - .2810**

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177. Plaintiffs re-allege by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.
178. Defendants are obligated to operate and implement METO consistent with Minnesota Statutes, Section 245.825 and Rule 40 (i.e., Minn. Rules 9525.2700 - .2810), which mandate no rules shall encourage or require the use of aversive or deprivation procedures.
179. Bradley, Thomas, Jason and Class Members are persons within the intended protection of Section 245.825 and Rule 40.
180. Defendants failed to use or require the use of positive approaches as an alternative to aversion and deprivation procedures and failed to document or require the documentation that positive approaches were tried and were unsuccessful.
181. Defendant' egregious, flagrant and inhumane acts and omissions constitute a pattern or practice violating Rule 40 and Section 245.825.

182. The harm suffered by Bradley, Thomas, Jason and Class Members is of the type Section 245.825 and Rule 40 were intended to prevent.
183. Defendants' conduct caused Plaintiffs and Class Members damages in an amount to be proven at trial, including attorney's fees and costs.

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**COUNT XI**  
**NEGLIGENCE *PER SE***  
**MINNESOTA STATUTES, SECTION 144.651**

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184. Plaintiffs re-allege by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.
185. Pursuant to Minnesota Statutes, section 144.651, subd. 14, METO patients are to be free from maltreatment, particularly from unnecessary drugs and physical restraints.
186. Bradley, Thomas, Jason and Class Members are persons within the intended protection of Section 144.651, subd. 14.
187. Defendants' egregious, flagrant and inhumane acts and omissions deprived Bradley, Thomas, Jason and Class Members of the right to be free from maltreatment.
188. The harm suffered by Bradley, Thomas, Jason and Class Members is of the type Section 144.651, subd. 14 was intended to prevent.
189. Defendants conduct caused Plaintiffs and Class Members damages in an amount to be proven at trial, including attorney's fees and costs.

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**COUNT XII**  
**NEGLIGENCE *PER SE***  
**MINNESOTA STATUTES, SECTIONS 253B.03, SUBD. 1 AND 245.825**

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190. Plaintiffs re-allege by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

191. Pursuant to Minnesota Statutes, Section 253B.03, subd. 1, persons have the right to be free from restraints, and restraints shall not be applied to patients with developmental disabilities except as permitted under Section 245.825.
192. Bradley, Thomas, Jason and Class Members are persons within the intended protection of Sections 253B.03, subd. 1 and 245.825.
193. Defendants use or allowance thereof, of metal handcuffs and leg hobbles to restrain Bradley, Thomas, Jason and Class Members violated Sections 253B.03, subd. 1 and 245.825 as alleged herein.
194. Defendants' egregious, flagrant and inhumane acts and omissions deprived Bradley, Thomas, Jason and Class Members of the right to be free from restraints, violating Sections 253B.03, subd. 1 and 245.825.
195. The harm suffered by Bradley, Thomas, Jason and Class Members is of the type Sections 253B.03, subd. 1 and 245.825 was intended to prevent.
196. Defendants' conduct caused Plaintiffs and Class Members damages in an amount to be proven at trial, including attorney's fees and costs.

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**COUNT XIII**  
**NEGLIGENCE *PER SE***  
**MINNESOTA STATUTE, SECTIONS 626.557 AND 626.5572 – VULNERABLE PERSONS**

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197. Plaintiffs re-allege by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.
198. At all times material, Bradley, Thomas, Jason and Class Members were vulnerable adults pursuant to Minn. Stat. §§ 626.557 and .5572, as they were unable or unlikely to report abuse or neglect without assistance due to developmental disability.

199. Defendants' egregious, flagrant and inhumane acts and omissions constitute "abuse" as defined by applicable law.
200. Bradley, Thomas, Jason and Class Members are persons within the intended protection of Sections 626.557 and .5572.
201. Defendants failed to properly report the maltreatment of Bradley, Thomas, Jason and Class Members about which Defendants knew or should have known. This failure to report constituted violations by Defendants of Sections 626.557 and .5572.
202. The harm suffered by Bradley, Thomas, Jason and Class Members is of the type Sections 626.557 and 626.5572 were intended to prevent.
203. Defendants' conduct caused Plaintiffs and Class Members damages in an amount to be proven at trial, including attorney's fees and costs.

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**COUNT XIV**  
**FALSE IMPRISONMENT**

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204. Plaintiffs re-allege by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.
205. Defendants, without privilege, intentionally and repeatedly used metal mechanical handcuffs and leg hobbles to wrongfully restrain and confine Bradley, Thomas, Jason and Class Members.
206. Defendants, without privilege, intentionally and repeatedly used seclusion methods to wrongfully confine Bradley, Thomas, Jason and Class Members.
207. Bradley, Thomas, Jason and Class Members were harmed by Defendants' wrongful restraint, seclusion and confinement.
208. Defendants' restraint, seclusion and confinement of Bradley, Thomas, Jason and Class Members were complete in that there were no known reasonable means of escape.



209. Defendants' conduct caused Plaintiffs and Class Members damages in an amount to be proven at trial.

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**COUNT XV**  
**ASSAULT**

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210. Plaintiffs re-allege by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

211. Without consent or privilege, by an intentional act directed at Bradley, Thomas, Jason and Class Members, Defendants' caused Bradley, Thomas, Jason and Class Members apprehension or fear of immediate harm or offensive contact through the excessive and repeated use of seclusion and law enforcement-type mechanical restraints in the form of handcuffs and leg hobbles.

212. Defendants possessed the ability to cause the harm or offensive contact.

213. Bradley, Thomas, Jason and Class Members had reasonable apprehension or fear immediate harm or offensive contact would occur.

214. Defendants' conduct caused Plaintiffs and Class Members damages in an amount to be proven at trial.

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**COUNT XVI**  
**BATTERY**

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215. Plaintiffs re-allege by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

216. Defendants intentionally caused harmful or offensive contact with the person of Bradley, Thomas, Jason and Class Members anything worn or held by or closely connected with them, without consent or privilege.

217. Defendants' act of restraining Bradley, Thomas, Jason and Class Members and use of law enforcement-type mental restraints were an offensive or harmful contact against them, and they did nothing to provoke Defendants or cause Defendants to believe they were putting either themselves or others in a position of imminent severe bodily harm, thus warranting use of restraints.
218. Defendants' conduct caused Plaintiffs and Class Members damages in an amount to be proven at trial.

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**COUNT XVII**  
**NEGLIGENCE**

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219. Plaintiffs re-allege by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.
220. Defendants owed Bradley, Thomas, Jason and Class Members a duty of care to keep them free from unlawful use of seclusion and restraints and protect from injury.
221. Defendants failed to use reasonable care in their care and treatment of Bradley, Thomas, Jason and Class Members while patients of the METO program through the excessive and repeated use of seclusion methods and restraints, including law enforcement-type metal mechanical devices in the form of handcuffs and leg hobbles.
222. Defendants' egregious, flagrant and inhumane acts and omissions breached their duty of care owed to Bradley, Thomas, Jason and Class Members.
223. Defendants' conduct caused Plaintiffs and Class Members damages in an amount to be proven at trial.

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**COUNT XVIII**  
**GROSS NEGLIGENCE**

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224. Plaintiffs re-allege by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.
225. Defendants owed Bradley, Thomas, Jason and Class Members a duty of care to keep them free from unlawful use of seclusion and restraints and protect from injury.
226. Defendants failed to use reasonable care in their care and treatment of Bradley, Thomas, Jason and Class Members while patients of the METO program through the excessive and repeated use of seclusion methods and restraints, including law enforcement-type mechanical devices in the form of metal handcuffs and leg hobbles.
227. Defendants' egregious, flagrant and inhumane acts and omissions breached their duty of care owed to Bradley, Thomas, Jason and Class Members resulting in negligence of the highest degree.
228. Defendants' conduct caused Plaintiffs and Class Members damages in an amount to be proven at trial.

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**COUNT XIX**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

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229. Plaintiffs re-allege by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.
230. Defendants' routine, excessive and repeated use of seclusion methods and law enforcement-type metal mechanical restraints in the form of handcuffs and leg hobbles as alleged herein, was extreme and outrageous such that Defendants' conduct exceeded the boundaries of decency and dignity, and is utterly intolerable to a civilized community.
231. Defendants' conduct was intentional and reckless.

232. Defendants' conduct caused Bradley, Thomas, Jason and Class Members severe emotional distress at the threat of being restrained and confined for any behavior no matter how slight and unlikely to cause injury.
233. The distress was so severe that no reasonable person could be expected to endure it.
234. Defendants' conduct caused Plaintiffs and Class Members damages in an amount to be proven at trial.

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**COUNT XX**

**FRAUD, MISREPRESENTATION AND RECKLESS MISREPRESENTATION**

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235. Plaintiffs re-allege by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.
236. Defendants represented the METO program as a comprehensive treatment facility, which promotes a "safe and sustainable return to the community" and is "homelike, permitting clients to maintain and improve daily living skills that facilitate development of self-esteem, acceptance of personal responsibility, and eventual reintegration into the community."
237. Defendants represented METO as a treatment program that "focuses on teaching alternatives to aggression, enhancing self-concept and learning to accept personal responsibility."
238. Defendants, through their silence where there was an obligation to disclose, represented that METO programs would operate consistent with applicable state and federal law as to the use of seclusion methods and mechanical restraints.
239. Defendants' misrepresentations regarding the type of treatment and care Bradley, Thomas, Jason and Class Members would receive in the METO program were material.

240. Defendants knew at the time these misrepresentations were made that they were false and/or were made without the knowledge of whether they were true or false.
241. Defendants knew and/or should have known Bradley, Thomas, Jason and Class Members did not receive the care and treatment represented through the acts and omissions of Defendants.
242. These misrepresentations were made by Defendants with the intention of inducing Plaintiffs to justifiably rely on Defendants with respect to the placement of Bradley, Thomas, Jason and Class Members in the METO program.
243. Plaintiffs relied and acted on Defendants' false representations.
244. Defendants' conduct caused Plaintiffs and Class Members damages in an amount to be proven at trial.

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**COUNT XXI**  
**NEGLIGENT MISREPRESENTATION**

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245. Plaintiffs re-allege by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.
246. Defendants represented the METO program as a comprehensive treatment facility, which promotes a "safe and sustainable return to the community" and is "homelike, permitting clients to maintain and improve dialing living skills that facilitate development of self-esteem, acceptance of personal responsibility, and eventual reintegration into the community."
247. Defendants represented METO as a treatment program that "focuses on teaching alternatives to aggression, enhancing self-concept and learning to accept personal responsibility."

248. Defendants, through their silence where there was an obligation to disclose, represented that METO programs would operate consistent with applicable state and federal law as to the use of seclusion methods and mechanical restraints.
249. Defendants' misrepresentations regarding the type of treatment and care Bradley, Thomas, Jason and Class Members would receive in the METO program were material.
250. Defendants failed to use reasonable care or competence in obtaining information regarding the type of care and treatment Bradley, Thomas, Jason and Class Members would receive while patients of the METO program.
251. These representations were made by Defendants with the intention of inducing Plaintiffs and Class Members to justifiably rely on them in choosing the METO program.
252. Plaintiffs and Class Members reasonably relied and acted on Defendants' false representations.
253. Defendants' conduct caused Plaintiffs and Class Members damages in an amount to be proven at trial.

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**COUNT XXII**  
**CONSUMER FRAUD AND DECEPTIVE TRADE PRACTICES –**  
**MINNESOTA STATUTES, SECTIONS 325F.69, 325D.44 AND 8.31, SUBD. 3a.**

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254. Plaintiffs re-allege by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.
255. Defendants held METO out to be a comprehensive treatment facility, which promotes a "safe and sustainable return to the community" and is "homelike, permitting clients to maintain and improve dialing living skills that facilitate development of self-esteem, acceptance of personal responsibility, and eventual reintegration into the community."

256. Defendants held METO out to be a treatment program that “focuses on teaching alternatives to aggression, enhancing self-concept and learning to accept personal responsibility.”
257. Defendants, through their silence where there was an obligation to disclose, represented that METO programs would operate consistent with applicable state and federal law as to the use of seclusion methods and mechanical restraints.
258. Defendants knew at the time these misrepresentations were made that they were false or were made without the knowledge of whether they were true or false.
259. These misrepresentations were made by Defendants with the intention of inducing Plaintiffs to justifiably rely on them in choosing the METO program.
260. Plaintiffs and Class Members relied and acted on the false information and misrepresentations made by Defendants regarding the type of treatment and care Bradley, Thomas, Jason and Class Members would receive as a patient of the METO program.
261. Defendants’ conduct caused Plaintiffs and Class Members damages in an amount to be proven at trial, including attorney’s fees, costs, disbursements, costs of investigation and other relief as determined by the Court.

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**COUNT XXIII**  
**INJUNCTIVE RELIEF**

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262. Plaintiffs re-allege by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.
263. Defendants’ practice involving the excessive, repeated and unlawful routine use of seclusion and restraints, including the use of law enforcement-type mechanical devices in the form of metal handcuffs and leg hobbles, violated and will continue to violate METO patients’ rights, privileges, or immunities secured and protected by federal and state law.

264. Defendants' practices, procedures and use of such restraints are capable of repetition but evading review.
265. METO patients will be subjected to the same harm as Bradley, Thomas, Jason and Class Members and will be deprived of their rights, privileges, or immunities secured and protected by federal and state law unless enjoined through temporary and permanent injunctive relief.
266. The exact amount of damages cannot be determined, and therefore, there is no adequate remedy at law.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully demand judgment against Defendants as follows:

1. The Court determine that this action may be maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;
2. The Court certify the Class as follows: Class Members (Class) consist of patients of the METO program subjected to repeated, excessive and improper use of seclusion methods and restraints routinely imposed as a means of behavior modification, coercion, discipline, convenience and/or retaliation, including the use of law enforcement-type mechanical devices in the form of metal handcuffs and leg hobbles; as well as any appropriate subclasses;
3. The Court appoint Plaintiffs as Class Representatives for the Class;
4. The Court appoint Plaintiffs' Counsel of record as Counsel for the Class;
5. Temporarily and permanently enjoining Defendants, their officers, agents, employees, subordinates, successors in office, and all those acting in concert or participation with them from any further use of seclusion and restraints;



6. In the alternative, permanently enjoining Defendants, their officers, agents, employees, subordinates, successors in office, and all those acting in concert or participation with them from any further use of mechanical restraints unless an independent third party, appointed by the Court, is physically present at METO, at Defendants' cost, to observe the alleged triggering behavior and agrees that the use of restraints are the only means available to ensure the safety of the patient and/or others from imminent serious bodily harm;
7. Enter a permanent injunction requiring Defendants to take such actions as will ensure that lawful and humane conditions of confinement are afforded to METO patients including the provision of adequate treatment in the most integrated and least restrictive setting appropriate to their individual needs;
8. Plaintiffs and Class Members receive judgment for all damages, as allowed by and consistent with applicable law, in an amount to be proven at trial;
9. Enter a judgment declaring that Minnesota Statutes, section 245.825 and Minnesota Rules 9525.2700 - .2810 are void and unconstitutional under the United States Constitution and the Constitution of the State of Minnesota, and permanently enjoining their use or enforcement by anyone for any means;
10. Plaintiffs recover their reasonable attorney's fees, costs, disbursements, interest, and costs of investigation, as allowed by and consistent with applicable law; and

11. Such other and further relief as this Court deems just and equitable.

Respectfully submitted,

**JOHNSON & CONDON, P.A.**

/s/ Shamus P. O'Meara

Dated: July 30, 2009

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