

**U.S. District Court
District of Montana (Butte)
CIVIL DOCKET FOR CASE #: 2:15-cv-00022-DWM**

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Disability Rights Montana v. Batista et al
Assigned to: Judge Donald W. Molloy
Case in other court: 9th Circuit, 15-35770
Cause: 42:1983 Civil Rights Act

Date Filed: 05/15/2015
Jury Demand: None
Nature of Suit: 555 Prisoner
Petitions (Prison Condition)
Jurisdiction: Federal Question

Plaintiff

**Disability Rights Montana
Inc.**, *on behalf of all prisoners with
serious mental illness confined to
the Montana State Prison*

represented by **Adrian Ann Miller**
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V.

Defendant

Reginald Michael
*in his official capacity as Director of
the Montana Department of
Corrections*

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Defendant

Lynn Guyer
*in his official capacity as warden of
Montana State Prison*

represented by **William L. Crowley**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Colleen E. Ambrose
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ATTORNEY TO BE NOTICED

Mary Cile Glover Rogers
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TERMINATED: 05/08/2017

Natasha Prinzing Jones
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ATTORNEY TO BE NOTICED

Thomas J. Leonard
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Date Filed	#	Docket Text
05/15/2015	<u>1</u>	COMPLAINT against Mike Batista, Leroy Kirkegard, filed by Disability Rights Montana. (Attachments: # <u>1</u> Civil Cover Sheet) (ELL,) (Entered: 05/15/2015)

05/15/2015	2	Summons Issued as to Mike Batista, Leroy Kirkegard. Originals mailed to cnsl for service. (ELL,) (Entered: 05/15/2015)
05/15/2015		Filing fee: \$ 400.00, receipt number 0977-1588328 (ELL,) (Entered: 05/15/2015)
05/15/2015	3	Corporate Disclosure Statement by Disability Rights Montana. (ELL,) (Entered: 05/15/2015)
05/18/2015	4	JOINT DISCOVERY PLAN by Disability Rights Montana. (Ellingson, Jon) (Entered: 05/18/2015)
05/20/2015	5	Order Setting: motions to dismiss complaint filed by 6/5/2015, response filed by 7/3/2015, and reply filed by 7/24/15. All other pretrial deadlines will be set by further order of the court. Signed by Judge Sam E Haddon on 5/20/2015. (DED,) (Entered: 05/20/2015)
05/20/2015	6	NOTICE of Appearance by William L. Crowley on behalf of Mike Batista, Leroy Kirkegard (Crowley, William) (Entered: 05/20/2015)
05/20/2015	7	NOTICE of Appearance by Thomas J. Leonard on behalf of Mike Batista, Leroy Kirkegard (Leonard, Thomas) (Entered: 05/20/2015)
05/20/2015	8	NOTICE of Appearance by Mary Cile Glover Rogers on behalf of Mike Batista, Leroy Kirkegard (Glover Rogers, Mary) (Entered: 05/20/2015)
06/01/2015	9	NOTICE of Appearance by Colleen E. Ambrose on behalf of All Defendants (Ambrose, Colleen) (Entered: 06/01/2015)
06/05/2015	10	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM Mary Cile Glover Rogers appearing for Defendants Mike Batista, Leroy Kirkegard (Glover Rogers, Mary) Modified on 8/19/2015 Martin-Lake Asso to report for hearing (DED,). (Entered: 06/05/2015)
06/05/2015	11	Brief/Memorandum in Support re 10 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Mike Batista, Leroy Kirkegard. (Glover Rogers, Mary) (Entered: 06/05/2015)
06/23/2015	12	MOTION Jeffrey A. Simmons to Appear Pro Hac Vice (Filing fee \$ 250 receipt number MTX900008510.) Jon E. Ellingson appearing for Plaintiff Disability Rights Montana (Attachments: # 1 Affidavit, # 2 Text of Proposed Order) (Ellingson, Jon) (Entered: 06/23/2015)
06/23/2015	13	MOTION Mathew D. Lee to Appear Pro Hac Vice (Filing fee \$ 250 receipt number MTX900008510.) Jon E. Ellingson appearing

		for Plaintiff Disability Rights Montana (Attachments: # 1 Affidavit, # 2 Text of Proposed Order) (Ellingson, Jon) (Entered: 06/23/2015)
06/24/2015	14	ORDER granting 12 Motion to Appear Pro Hac Vice for Attorney Jeffrey A. Simmons for Disability Rights Montana. Signed by Judge Sam E Haddon on 6/24/2015. (ELL,) (Entered: 06/24/2015)
06/24/2015	15	ORDER granting 13 Motion to Appear Pro Hac Vice for atty Mathew D. Lee. Signed by Judge Sam E Haddon on 6/24/2015. (ELL,) Modified on 6/24/2015 Cpy of Afdt sent to TO in GF for input into CM/ECF (ELL,). (Entered: 06/24/2015)
06/24/2015	16	Letter to cnsl Lee re ECF Registration with copy of Order Granting PHV. (ELL,) (Entered: 06/24/2015)
07/02/2015	17	RESPONSE to Motion re 10 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Disability Rights Montana. (Simmons, Jeffrey) (Entered: 07/02/2015)
07/02/2015	18	AFFIDAVIT in Opposition re 10 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM <i>Declaration of Jeffrey A. Simmons</i> filed by Disability Rights Montana. (Attachments: # 1 Exhibit Demand Letter) (Simmons, Jeffrey) (Entered: 07/02/2015)
07/16/2015	19	NOTICE of Acknowledgment of Pro Hac Vice Order by Disability Rights Montana (Simmons, Jeffrey) (Entered: 07/16/2015)
07/16/2015	20	NOTICE of Acknowledgment of Pro Hac Vice Order by Disability Rights Montana (Lee, Matthew) (Entered: 07/16/2015)
07/24/2015	21	REPLY to Response to Motion re 10 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Mike Batista, Leroy Kirkegard. (Glover Rogers, Mary) (Entered: 07/24/2015)
08/19/2015	22	ORDER Setting Hearing on Motion 10 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM : Contract Court Reporter is Needed , Motion Hearing set for 9/3/2015 at 10:00 AM in Helena, MT before Judge Sam E Haddon. Signed by Judge Sam E Haddon on 8/19/2015. (ELL,) (Entered: 08/19/2015)
09/02/2015	23	Emergency MOTION for Leave to Appear by telephone <i>at hearing on motion to dismiss</i> Jeffrey A. Simmons appearing for Plaintiff

		Disability Rights Montana (Simmons, Jeffrey) (Entered: 09/02/2015)
09/02/2015	24	AFFIDAVIT in Support re 23 Emergency MOTION for Leave to Appear by telephone <i>at hearing on motion to dismiss</i> filed by Disability Rights Montana. (Simmons, Jeffrey) (Entered: 09/02/2015)
09/03/2015	25	ORDER granting in part 23 Motion for Leave to Appear Telephonic at 9/3/2015 hearing Signed by Judge Sam E Haddon on 9/3/2015. Phone call placed to Mr. Simmons advising of Order. (DED,) (Entered: 09/03/2015)
09/03/2015	26	<p>MINUTE ENTRY Minute Entry for proceedings held before Judge Sam E Haddon: Motion Hearing held on 9/3/2015 re 10</p> <p>MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Mike Batista, Leroy Kirkegard. Mr. Ellingson present in courtroom and Mr. Simmons present telephonically on behalf of Plainitff. Paulette Kohman present for Defendants in CV-14-25 and Thomas Leonard present for Defendants in CV-14-25 and CV-15-22. Court will approach motions separately and hear arguments in CV-14-25 and then CV-15-22. Court hears from Ms. Kohman, Mr. Ellingson responds, and Ms. Kohman replies; Mr. Ellingson presents a sur-reply. Court finds facts pleaded are sufficient to allow matter to proceed, and denies Defendants 12(b)(6) Motion to be Dismiss. Court hears argument regarding CV-15-22 matter. Mr. Leonard heard on behalf of Defendants, Mr. Ellingson responds, and Mr. Leonard replies. Court presents its findings and grants Defendants Rule 12(b)(6) Motion to Dismiss Hearing commenced at 10:39 and concluded at 11:31. (Court Reporter Julie Lake.) (Law Clerk: Carolyn Sime), (Hearing held in Helena) (DED,) (Entered: 09/03/2015)</p>
09/03/2015	27	ORDER granting 10 Motion to Dismiss for Failure to State a Claim. This case is DISMISSED. Signed by Judge Sam E Haddon on 9/3/2015. (ELL,) (Entered: 09/03/2015)
09/04/2015	28	TRANSCRIPT DESIGNATION ORDER FORM by Disability Rights Montana for proceedings held on 09/03/2015 before Judge Sam E. Haddon. Court reporter Julie Lake. Transcript due by 9/4/2015. (Simmons, Jeffrey) (Entered: 09/04/2015)
09/08/2015	29	TRANSCRIPT DESIGNATION ORDER FORM by Mike Batista, Leroy Kirkegard for proceedings held on 09/03/2015 before Judge

		Hon. Sam E. Haddon. Court reporter Julie Lake. Transcript due by 10/16/2015. (Leonard, Thomas) (Entered: 09/08/2015)
09/08/2015	30	TRANSCRIPT of Motion to Dismiss held on September 3, 2015, before Judge Haddon. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER, the Clerks Office or the court reporter NOTICE: A NOTICE OF INTENT TO REQUEST REDACTION MUST BE FILED WITHIN 14 DAYS OF THIS FILING. Contact Court Reporter Julie Lake, 406-543-6477. Transcript Redaction Procedures . Redaction Request due 9/29/2015. Redacted Transcript Deadline set for 10/9/2015. Release of Transcript Restriction set for 12/7/2015. (ELL,) (Entered: 09/08/2015)
10/01/2015	31	NOTICE OF APPEAL as to 27 Order on Motion to Dismiss for Failure to State a Claim by Disability Rights Montana. Filing fee \$ 505.00 - Rept no. MTX9-8854. (Attachments: # 1 Exhibit Representation Statement) (Simmons, Jeffrey) Modified on 10/1/2015 to add receipt number. Regenerated NEF (APP,). (Entered: 10/01/2015)
10/02/2015	32	USCA Case Number 15-35770 and Time Schedule Order for 31 Notice of Appeal, filed by Disability Rights Montana. (ELL,) (Entered: 10/02/2015)
11/11/2015	33	Unopposed MOTION to Include Portions of Record from Case No. 2:14-CV-25 <i>in the Record on Appeal</i> Jeffrey A. Simmons appearing for Plaintiff Disability Rights Montana (Attachments: # 1 Exhibit Proposed Order) (Simmons, Jeffrey) (Entered: 11/11/2015)
11/16/2015	34	ORDER granting 33 Motion To Include Portions of the Record from Case No. 2:14-cv-25-SEH in the Record on Appeal. Signed by Judge Sam E Haddon on 11/16/2015. (ELL,) (Entered: 11/16/2015)
11/17/2015	35	NOTICE/Docket Sheet from CV-14-25-BU-SEH re 34 Order on Motion for Miscellaneous Relief. Pursuant to Court Order the following documents are included in the record from Disability Rights Montana, Inc, v Opper, et al CV-14-25-BU-SEH: (Attachments: # 1 Docket No 1 - Complaint, # 2 Docket No 16 - Joint Answer, # 3 Docket No 17 - Motion to Dismiss, # 4 Docket No 18 - Brief/Memorandum in Support of Motion to Dismiss, # 5 Docket No 21 - Response to Motion to Dismiss, # 6 Docket No 33 - Order, # 7 Docket No 42 - Amended Complaint, # 8 Docket No 45 - Joint Answer, # 9 Docket No 46 - Motion to Dismiss, # 10 Docket No 53 - Order Setting Status Conference, # 11 Docket

		No 58 - Order, # 12 Docket No 61 - Transcript, # 13 Docket No 66 - Amended Complaint, # 14 Docket No 67 - Amended Complaint, # 15 Docket No 68 - Brief/Memorandum in Support re Amended Complaint, # 16 Docket No 70 - Order, # 17 Docket No 71 - Motion to Dismiss, # 18 Docket No 72 - Brief Memorandum In Support Re Motion To Dismiss, # 19 Response To Motion Re Motion To Dismiss, # 20 Docket No 78 - Reply to Response to Motion, # 21 Docket No 85 - Order, # 22 Docket No 89 - Motion, # 23 Docket No 90 - Brief Memorandum In Support Re Motion to Amend Correct, # 24 Docket No 93 - Order) For Docket No's 57, 84 and Minute Entry of 5/11/15 please see the Docket Sheet. (ELL,) (Entered: 11/17/2015)
05/08/2017	36	NOTICE of Withdrawal of Counsel: Mary Cile Glover Rogers withdrawing from the case, filed by Mike Batista, Leroy Kirkegard (Glover Rogers, Mary) (Entered: 05/08/2017)
07/19/2019	37	OPINION of USCA as to 31 Notice of Appeal filed by Disability Rights Montana. REVERSED AND REMANDED. (NOS) (Entered: 07/19/2019)
08/12/2019	38	MANDATE of USCA as to 31 Notice of Appeal. The judgment entered July 19, 2019, takes effect this date. (NOS) (Entered: 08/12/2019)
08/13/2019	39	ORDER REASSIGNING CASE. Case reassigned to Judge Donald W. Molloy for all further proceedings. Signed by Judge Dana L. Christensen on 8/13/2019. (NOS) (Entered: 08/13/2019)
08/14/2019	40	NOTICE of Substitution of Counsel by Disability Rights Montana (Rate, Alexander) (Entered: 08/14/2019)
08/14/2019	41	NOTICE of Appearance by Natasha Prinzing Jones on behalf of Mike Batista, Leroy Kirkegard (Jones, Natasha) (Entered: 08/14/2019)
09/10/2019	42	ANSWER to 1 Complaint (<i>Second Amended</i>) by Mike Batista, Leroy Kirkegard. (Leonard, Thomas) (Entered: 09/10/2019)
09/10/2019	43	PRELIMINARY PRETRIAL CONFERENCE ORDER: Preliminary Pretrial Statement due by 10/9/2019. Joint Discovery Plan due by 10/9/2019. Statement of Stipulated Facts due by 10/9/2019. Pretrial Conference set for 10/16/2019 at 1:30 PM in the Russell Smith Courthouse, Missoula, MT before Judge Donald W. Molloy. Signed by Judge Donald W. Molloy on 9/10/2019. (dle) (Entered: 09/10/2019)

10/09/2019	44	JOINT DISCOVERY PLAN by Disability Rights Montana. (Simmons, Jeffrey) (Entered: 10/09/2019)
10/09/2019	45	PRELIMINARY PRETRIAL STATEMENT by Disability Rights Montana. (Simmons, Jeffrey) (Entered: 10/09/2019)
10/09/2019	46	PRELIMINARY PRETRIAL STATEMENT by Mike Batista, Leroy Kirkegard. (Leonard, Thomas) (Entered: 10/09/2019)
10/09/2019	47	STATEMENT OF STIPULATED FACTS by Mike Batista, Leroy Kirkegard. (Leonard, Thomas) (Entered: 10/09/2019)
10/16/2019		MINUTE ENTRY: Minute Entry for proceedings held before Judge Donald W. Molloy: Interim Pretrial Conference held on 10/16/2019. (Law Clerk: H. Garber), (Hearing held in Missoula) (dle) (Entered: 10/16/2019)
10/16/2019	48	SCHEDULING ORDER: Bench Trial set for 3/22/2021 at 9:00 AM in the Russell Smith Courthouse, Missoula, MT before Judge Donald W. Molloy. Final Pretrial Conference set for 3/22/2021 at 9:00 AM in the Russell Smith Courthouse, Missoula, MT before Judge Donald W. Molloy. Amended Pleadings due by 12/4/2019. Discovery due by 11/10/2020. Motions due by 12/8/2020. Proposed Pretrial Order due by 3/15/2021. Signed by Judge Donald W. Molloy on 10/16/2019. (dle) (Entered: 10/16/2019)
12/23/2019	49	AMENDED COMPLAINT against All Defendants, filed by Disability Rights Montana. (Simmons, Jeffrey) (Entered: 12/23/2019)
12/27/2019	50	ORDER. IT IS ORDERED that on or before January 10, 2020, Disability Rights Montana shall SHOW CAUSE why the amended complaint should not be stricken. Signed by Judge Donald W. Molloy on 12/27/2019. (NOS) (Entered: 12/27/2019)
01/07/2020	51	RESPONSE TO ORDER TO SHOW CAUSE by Disability Rights Montana. (Attachments: # 1 Exhibit 1, Email Exchange, # 2 Exhibit 2, Redline of Amended Complaint) (Simmons, Jeffrey) (Entered: 01/07/2020)
01/08/2020	52	ORDER. IT IS ORDERED that Defendants Reginald Michael and Lynn Guyer shall file a response to the Amended Complaint pursuant to the Federal Rules of Civil Procedure. Signed by Judge Donald W. Molloy on 1/8/2020. (NOS) (Entered: 01/08/2020)
01/10/2020	53	ANSWER to 49 Amended Complaint by Lynn Guyer, Reginald Michael. (Leonard, Thomas) (Entered: 01/10/2020)

03/13/2020	54	NOTICE of Withdrawal of Counsel: Jeffrey A. Simmons withdrawing from the case, filed by Disability Rights Montana (Simmons, Jeffrey) (Entered: 03/13/2020)
06/02/2020	55	Joint MOTION to Stay Matthew D. Lee appearing for Plaintiff Disability Rights Montana (Attachments: # 1 Text of Proposed Order Proposed Order to Stay) (Lee, Matthew) (Entered: 06/02/2020)
06/03/2020	56	ORDER denying 55 Motion to Stay. Signed by Judge Donald W. Molloy on 6/3/2020. (dle) (Entered: 06/03/2020)
09/02/2020	57	Joint MOTION to Stay Matthew D. Lee appearing for Plaintiff Disability Rights Montana (Attachments: # 1 Text of Proposed Order Proposed Order) (Lee, Matthew) (Entered: 09/02/2020)
09/02/2020	58	AFFIDAVIT/DECLARATION re 57 Joint MOTION to Stay <i>Declaration of Kathryn A. Burns, M.D., M.P.H.</i> by Disability Rights Montana. (Lee, Matthew) (Entered: 09/02/2020)
09/02/2020	59	AFFIDAVIT/DECLARATION re 57 Joint MOTION to Stay <i>Declaration of Thomas J. Leonard</i> by Disability Rights Montana. (Lee, Matthew) (Entered: 09/02/2020)
09/02/2020	60	AFFIDAVIT/DECLARATION re 57 Joint MOTION to Stay <i>Declaration of Jim Salmonsens</i> by Disability Rights Montana. (Lee, Matthew) (Entered: 09/02/2020)
09/08/2020	61	ORDER re 48 Scheduling Order - RESETTING: Discovery due by 11/9/2021. Motions due by 12/7/2021. Proposed Pretrial Order due by 3/14/2022. Bench Trial RESET for 3/21/2022 at 9:00 AM in the Russell Smith Courthouse, Missoula, MT before Judge Donald W. Molloy. Final Pretrial Conference RESET for 3/21/2022 at 9:00 AM in the Russell Smith Courthouse, Missoula, MT before Judge Donald W. Molloy. 57 Joint MOTION to Stay DENIED as to request for stay. Signed by Judge Donald W. Molloy on 9/8/2020. (dle) (Entered: 09/08/2020)

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