

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

SEP 07 2017

JAMES W. MCCORMACK, CLERK
By: [Signature]
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**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS**

CAROLYN ARNETT,

Plaintiff,

v.

LARRY NORRIS, ROY HOBBS, WENDY KELLEY,
LINDA DIXON, JOHN MAPLES, MAGGIE CAPEL,
NURZUHAL FAUST, CHRISTOPHER BUDNIK,
LINDA DYKES, JOHN MARK WHEELER,
KENNETH DEWITT, DON YANCEY,
STACEY SMITH, JENNIFER SMITH and JOHN DOES
ONE THROUGH TEN, all in their individual capacities,

Defendants.

Case No.: 1:17CV76-BRW

*****JURY TRIAL DEMANDED**

This case assigned to District Judge [Signature]

COMPLAINT and to Magistrate Judge [Signature]

NOW COMES, Plaintiff, CAROLYN ARNETT, by and through her attorneys, LAUX

LAW GROUP, and for her cause of action against Defendants, states as follows:

JURISDICTION AND VENUE

1. This action arises under the Eighth and Fourteenth Amendments of the United States Constitution, federal law, specifically, 42 U.S.C. §§ 1983 and 1985, and the laws of the State of Arkansas. This Honorable Court has subject matter and supplemental jurisdiction by virtue of 28 U.S.C. §§ 1331 and 1367, respectively. Venue is founded in this Court upon 28 U.S.C. § 1391, as the acts of which Plaintiff complains arose in this District.

PARTIES

3. At all relevant times, CAROLYN ARNETT ("Plaintiff") was an inmate at the McPherson Unit (hereafter "McPherson" or the "facility") of the Arkansas Department of Correction (hereafter "ADC"), which is located at 302 Corrections Drive, Newport, Arkansas. At all relevant times, Plaintiff was an incarcerated citizen of the United States of America and

was, therefore, entitled to all legal and constitutional rights afforded incarcerated citizens of the United States of America, and the State of Arkansas, (hereafter “Arkansas” or “the State”).

4. At all relevant times, LARRY NORRIS (hereafter “NORRIS”) was an employee of the State, specifically, the ADC, and acted under color of state law. NORRIS was ADC Director from 1993 to 2010, and again in 2014.

5. At all relevant times, ROY HOBBS (hereafter “HOBBS”) was an employee of the State, specifically, the ADC, and acted under color of state law. HOBBS was ADC Director from 2010 to 2014.

6. At all relevant times, WENDY KELLEY (hereafter “KELLEY”) was an employee of the State, acted under color of state law, and was either: a Deputy Attorney General with the Arkansas Attorney General’s Office (1992 to February 2006); the ADC Deputy Director for Health and Correctional Programs (February 2006 to 2013); the ADC Chief Deputy Director (January 2014 to December 2014); or ADC Director (January 2015 to present).

7. As a Deputy Attorney General with the Arkansas Attorney General’s Office, the ADC was one of KELLEY’s major litigation clients.

8. As the ADC Chief Deputy Director, KELLEY was responsible for Research/Planning/Policy, the implementation of the Prison Rape Elimination Act within the ADC, the Inmate Grievance Division, Sex Offender Assessment and the Training Academy, and also had other duties.

9. As the ADC Deputy Director for Health and Correctional Programs, KELLEY was responsible for the implementation of Catholic, Protestant, Jewish and Islamic religious services to ADC inmates, and the provision of opportunities for other religious groups to meet in accordance with inmate needs and security procedures. In this role, KELLEY was responsible

for the provision of chaplain services at McPherson, and the approval of McPherson's chaplain employees.

10. During their respective tenures as the ADC Director, NORRIS, HOBBS and KELLEY, and each of them:

- a) were responsible for advancing the ADC's philosophy;
- b) were responsible for the ADC's mission and operations, and reported directly to the ADC Board of Directors;
- c) were responsible for advancing the vision and goals of the ADC;
- d) were responsible for formulating, amending and/or reviewing departmental regulations and policies;
- e) were responsible for reviews of serious incidents occurring at ADC prisons; and
- f) oversaw four ADC divisions: Institutional Services; Health and Correctional Programs; Construction and Maintenance; and Administrative Services.

11. At all relevant times, LINDA DIXON (hereafter "DIXON") was an employee of the State, specifically, the ADC, and acted under color of state law. At all relevant times, DIXON was either: a facility Lieutenant (1999); a facility Major (dates unknown); or Deputy Warden (2015 to January 2016).

12. At all relevant times, JOHN MAPLES (hereafter "MAPLES") was an employee of the State, specifically, the ADC, and acted under color of state law. At all relevant times, including 1998 to 2014, MAPLES was the Senior Warden at the facility.

13. At all relevant times, MAGGIE CAPEL (hereafter "CAPEL") was an employee of the State, specifically, the ADC, and acted under color of state law. At all relevant times, including the late 1990s to 2005, CAPEL was a Unit Warden at the facility.

14. At all relevant times, NURZUHAL FAUST (hereafter "FAUST") was an employee of the State, specifically, the ADC, and acted under color of state law. At all relevant times, including 2014, FAUST was a Unit Warden at the facility.

15. At all relevant times, CHRISTOPHER BUDNIK (hereafter "BUDNIK") was an employee of the State, specifically, the ADC, and acted under color of state law. At all relevant times, including 2014 to 2015, BUDNIK was an Assistant Warden at the facility.

16. At all relevant times, LINDA DYKES (hereafter "DYKES") was an employee of the State, specifically, the ADC, and acted under color of state law. At all relevant times, including May 2015, DYKES was a Warden at the facility.

17. At all relevant times, JOHN MARK WHEELER (hereafter "WHEELER") was an employee of the State, specifically, the ADC, and acted under color of state law. At all relevant times, WHEELER was Administrator of Religious Services and Head Chaplain, where he was responsible for the implementation and supervision of chaplaincy services, and had other duties.

18. At all relevant times, KENNETH DEWITT (hereafter "DEWITT") was an employee of the State, specifically, the ADC, and acted under color of state law. At all relevant times, DEWITT was the Unit Chaplain or former Unit Chaplain at McPherson.

19. At all relevant times, DON YANCEY (hereafter "YANCEY") was an employee of the State, specifically, the ADC, and acted under color of state law. At all relevant times, YANCEY was a Senior Chaplain at the facility and Chaplain and/or Administrator at other ADC prisons.

20. At all relevant times, STACEY SMITH (hereafter "STACEY SMITH") was either: an employee or agent of the State, specifically, the ADC, acting under color of state law; or an inmate in the facility.

21. At all relevant times, JENNIFER SMITH (hereafter "JENNIFER SMITH") was an employee or agent of the State, specifically, the ADC, and acted under color of state law. At all relevant times, including 2015, JENNIFER SMITH was a Chaplain at the facility.

22. At all relevant times, JOHN DOES ONE THROUGH TEN, were each employees of the State, specifically, the ADC, and acted under color of state law. Though JOHN DOES ONE THROUGH TEN are currently unidentified by Plaintiff, she alleges herein that each of them engaged in various tortious and unconstitutional acts and omissions which caused her physical and emotional pain and injuries. Upon information and belief, Plaintiff avers that the true identities of JOHN DOES ONE THROUGH TEN, some of whom are correctional officers, will be ascertained during court-ordered discovery in the matter.

23. At all relevant times, the State is and was empowered and funded to pay any § 1983 civil rights judgment for compensatory damages, actual damages and attorney fees for which any State officer or employee, acting within the scope of his or her employment, is found liable. Accordingly, the State is an indemnification party regarding potential liability for the acts and omissions of NORRIS, HOBBS, KELLEY, MAPLES, CAPEL, FAUST, BUDNIK, DYKES, WHEELER, YANCEY and DIXON, and each of them, of which Plaintiff complains herein.

24. The State is an indemnification party regarding potential liability for the acts and omissions of DEWITT, of which Plaintiff herein complains.

25. The State is an indemnification party regarding potential liability for the acts and omissions of STACEY SMITH and JENNIFER SMITH, and each of them, of which Plaintiff herein complains.

FACTUAL ALLEGATIONS

The Arkansas Department Of Corrections (ADC)

26. The ADC is an agency of the State, and its mission is “to provide public safety by carrying out the mandate of the courts, provide a safe humane environment for staff and inmates, strengthen the work ethic through teaching of good habits, and provide opportunities for staff and inmates to improve spiritually, mentally, and physically.”

27. The vision of the ADC is “[t]o be an honorable and professional organization through ethical and innovative leadership at all levels, providing cost efficient, superior correctional services that return productive people to the community.”

28. The goals of the ADC include:

- a) maintaining cost efficient care, custody, and control over all inmates in an appropriate, safe, humane, and secure environment;
- b) providing appropriate facilities for inmates sentenced by the courts;
- c) attracting and retaining quality staff; and
- d) insuring compliance with all local, State and Federal laws as well as Governor’s Policy Directives, Administrative Regulations and Administrative Directives, and providing accountability, integrity and efficiency for all agency operations.

29. The advancement of the mission, vision and goals described in Plaintiff’s Paragraphs 26-28 above are among the responsibilities common to all ADC Directors, at all relevant times, including NORRIS, HOBBS and KELLEY, and each of them, during their respective tenures as ADC Director.

**Responsibilities Of The Unit Warden, Assistant Warden
And Other ADC Employees And Agents**

30. Per ADC policy, the ADC Director shall delegate authority to the Unit Wardens/Center Supervisors/Administrators or appropriate administrative designees to act on all matters related to the unit/center operational areas, to manage all programs, activities, inmates, personnel and volunteers connected with the unit/center/operational areas.

31. Per ADC policy, all units of the ADC shall have a Unit Warden who is in charge and an Assistant Warden to whom is delegated the authority in the absence of the Unit Warden. All centers/operations shall have a Center Supervisor/Administrator who is in charge or, in his/her absence, a designee who has been approved for the delegated authority. Per ADC policy, one of these individuals must be on call at all times, and in charge of the affairs of the unit/center/operations.

32. The advancement of the mission, vision and goals described in Plaintiff's Paragraphs 26-28 above are among the responsibilities common to all McPherson Wardens, at all relevant times, including MAPLES, CAPEL, FAUST, BUDNIK and DYKES, and each of them, during their respective tenures as McPherson Warden.

**The Responsibilities Of The Administrator Of Religious Services,
And The Role Of Chaplain And Volunteers**

33. At all relevant times, it was the express policy of the ADC to allow inmates access to the opportunities and means to learn about religions and to practice a religion of choice, without undue restriction. It is the policy of the ADC to provide those incarcerated in its care the greatest amount of freedom and opportunity for pursuing individual religious beliefs and practices as is consistent with safety of inmates and staff, the good order of the institution and

accepted correctional practices. All religious activities—worship services, meetings, counseling, visiting—must comply with institution schedules and guidelines, per ADC policy.

34. Per ADC policy, the Administrator of Religious Services is responsible for the religious program within the ADC. This is accomplished through planning and evaluation of programs and services, supervising Chaplains, Interns, Religious Activity Coordinator, Certified Religious Assistant, and administering the religious program and activities. The Administrator of Religious Services is under the direct supervision of the Deputy Director of Health and Correctional Programs.

35. Per ADC policy, a Chaplain is assigned to be Senior Chaplain at a unit that has two or more Chaplains. The Senior Chaplain is responsible for the religious program, activities and personnel assigned to the Chapel under the direction of the Unit Warden and the Administrator of Religious Services. The Unit Chaplain is a chaplain who is assigned to a unit and is responsible for the religious program and activities under the direction of the Unit Warden and Administrator of Religious Services. The Chaplain is assigned to a unit and is under the supervision of a Senior Chaplain, Unit Warden and Administrator of Religious Services.

36. Per ADC policy, the Chaplain is to offer general and pastoral care for all inmates and staff as approved by the Unit Warden/Center Supervisor, or designee, and approved by the Administrator of Religious Services. Per ADC policy, “[t]he Chaplain is not denied access to any section of the Unit. If an inmate or staff is assigned to a certain area, he/she may have access to a Chaplain. Security and Construction protocols must be met.”

37. Per ADC policy, “[t]he Chaplain will schedule and supervise all approved religious activities. The Chaplain will recommend religious activities to the Warden/Center Supervisor, or designee, and the Administrator of Religious Services...The Chaplain selects free

world representatives to conduct worship services, activities, meetings and counseling with the approval of the unit Warden/Center Supervisor.”

38. Per ADC policy, the Unit Chaplain is administrator of the total religious program at the Unit/Center, and functions as a Division Head.

39. Per ADC policy, Chaplains within the Department of Correction are responsible for supervising religious volunteers. After any allegation of rule violation or inappropriate behavior of the religious volunteer is made known to the Chaplain, the Chaplain must take appropriate action. The allegations and/or inappropriate behavior of the religious volunteer must be investigated, documented, and Administrator of Religious Services notified.

40. Per ADC policy, the volunteer must obey and support department rules and regulations. The religious volunteer must encourage respect for authority, and support the good order of the institution. The religious volunteer is expected to model beliefs and values consistent with his/her teaching both inside the Department and in the community.

ADC Policies, Regulations And Standards

41. Since at least 2000, there was an ADC policy entitled “Employee Conduct Standards,” which applied to all Defendants, and other ADC employees and agents, at all relevant times.

42. Since at least 1996, there was an ADC policy entitled “Grievance Procedures for Offenders,” which applied to all Defendants, and other ADC employees and agents, at all relevant times.

43. Since at least 1996, there was an ADC policy entitled “Use of Force,” which applied to all Defendants, and other ADC employees and agents, at all relevant times.

44. Since at least 2001, there was an ADC policy entitled “Sexual Harassment,” which applied to all Defendants, and other ADC employees and agents, at all relevant times.

45. Since at least 2014, there was an ADC policy entitled “Security,” which applied to all Defendants, and other ADC employees and agents, at all relevant times.

46. Since at least 2015, there was an ADC policy entitled “Searches for and Control of Contraband,” which applied to all Defendants, and other ADC employees and agents, at all relevant times.

47. Since at least 1987, there was an ADC policy entitled “Reporting of Incidents,” which applied to all Defendants, and other ADC employees and agents, at all relevant times.

48. Since at least 1980, there was an ADC policy entitled “Relationships and Transactions with Inmates,” which applied to all Defendants, and other ADC employees and agents, at all relevant times.

49. Since at least 2005, there was an ADC policy entitled “Prison Rape Elimination Act (P.R.E.A.),” which applied to all Defendants, and other ADC employees and agents, at all relevant times.

50. Since at least 2006, there was an ADC policy entitled “Internal Affairs and Investigations,” which applied to all Defendants, and other ADC employees and agents, at all relevant times.

51. At all relevant times, all McPherson employees and agents, including Defendants, and each of them, were obligated to comport themselves in accordance with ADC policy, the United States Constitution and the laws of the State of Arkansas.

The Opening Of The McPherson Unit, And Principles and Applications For Life (PAL)

52. In 1993, NORRIS was named Director of the ADC.

53. In January 1998, McPherson opened as a private prison built and operated by Wackenhut Corrections Corporation (hereafter “Wackenhut”), on behalf of the State, pursuant to a contractual agreement between Wackenhut and Arkansas. McPherson, an all-female unit, has four (4) primary housing areas. The housing areas contain nineteen (19) large barracks: twelve “open,” dormitory-style barracks, and seven (7) “closed” barracks with double-bunk cells on two (2) levels. At all relevant times, McPherson had single cells in its isolation barracks, which are used to house inmates on administrative and “punitive” segregation status, among others.

54. In 1998, after securing authorization/endorsement from the ADC, through NORRIS and other ADC officials, DEWITT brought his faith-based prison program, Principles and Applications For Life (hereafter “PAL” or the “Program”), to McPherson. PAL was fully authorized/endorsed by NORRIS, and the ADC Board of Corrections, and it was operated under the direct authority and control of DEWITT.

55. According to the PAL Standard Operating Procedures Manual, the Program “endeavors to create better morale among the inmates, reduce disciplinary action, and reduce the rate of recidivism among inmates by instilling the importance of good character and personal responsibility. Furthermore, PAL seeks to equip inmates with the skills necessary to resolve the conflicts of life in a positive manner, grow from past failures, and live as productive members of society.”

56. The goals of PAL include:

- a) training participants in the foundational basis of wise decisions;

- b) teaching program participants how to view life from a spiritual perspective;
- c) explaining the proper procedures in how to respond to unexpected and difficult situations in life;
- d) intensive training in anger management;
- e) imparting a respect for authority structures within family, church, corporate and civil jurisdictions;
- f) imparting to the inmate the importance of purpose in life and discovery of individual purpose;
- g) instilling basic principles of financial responsibility;
- h) introducing foundational beliefs and skills of relationship building and positive parenting;
- i) instructional training in the concepts of moral law; and
- j) providing training in work responsibilities as part of character development.

57. DEWITT had final authority for the screening and acceptance of PAL applicants—all of whom were female inmates—into the Program. As part of this authority, DEWITT personally interviewed and evaluated each PAL applicant, and then submitted a list of the inmates he selected to the Assistant Warden for approval for entrance into the Program.

58. According to the PAL Standard Operating Procedures Manual, it was the responsibility of DEWITT “to ensure that PAL is conducted according to the guidelines, policies and structure that facilitate the operation of the program. As the Shepherd of the program it is critical that the Chaplain sets the spiritual pace of the day and leads by example.” Per the PAL Standard Operating Procedures Manual, the Chaplain must:

- a) have a life that exemplifies that he/she lives the curriculum;
- b) provide oversight of the program including the volunteers who instruct classes;

- c) investigate conflicts that occur and work in harmony with security; and
- d) work under the Administrator of the Chaplaincy and the Unit Warden and staff.

59. While the authority granted to a Unit Chaplain is considerable per express policy, DEWITT enjoyed even greater autonomy at McPherson. DEWITT selected and supervised all Program Coordinators, volunteers and other ADC employees and agents.

60. At all relevant times, DEWITT had the sole discretion to dismiss any PAL participant not showing evidence of progress toward meeting Program requirements, and to return her to the appropriate facility population whenever he desired. PAL participants all knew the power and clout DEWITT wielded at McPherson.

61. At the time DEWITT was authorized/endorsed to implement PAL at McPherson, and at all relevant times, NORRIS, KELLEY and HOBBS, as well as other ADC officials, were aware that DEWITT premised the Program on the teachings of Bill Gothard (hereafter "Gothard"), an evangelical minister, and specifically, Gothard's Character Training Institute, (hereafter "CTI") which taught, among other things, that sex is a male birthright because males are the head of the household and in a natural position of authority.

62. In 1998, and at all relevant times, NORRIS, HOBBS and KELLEY, as well as other ADC officials, were aware of statements attributed to Gothard in CTI literature and elsewhere wherein he blamed rape victims for their sexual abuse, and stated that no victim of sexual abuse is truly a victim, if that person has the "proper perspective."

63. NORRIS, KELLEY and HOBBS, and other ADC officials, knew DEWITT enjoyed a close personal relationship with Gothard, and that Gothard's controversial and dangerous teachings—such as those justifying sexual abuse by males in positions of authority—

would become major components of PAL and the teachings DEWITT would administer at McPherson.

64. As one should reasonably expect, DEWITT's teachings indeed mirrored those of his mentor, Gothard. Like those of Gothard, DEWITT's teachings had a specific, predominating theme: the submission of female inmates to male authority, particularly his authority. DEWITT routinely preached that God would send a human messenger to his PAL participants, and he then proceeded to cast himself in that divine role. DEWITT used these dangerous religious teachings, along with a strident condemnation of homosexual relationships, to indoctrinate female PAL participants into what was essentially a cult, and to brainwash them in order to lessen their resistance to his improper sexual advances.

65. Among the sentiments preached by DEWITT to PAL participants:

- The Principle of Authority is recognizing that God works through human authorities to accomplish His purpose and to give [you] protection, direction and provision. Honoring [] authority brings inward peace.
- Confidence of God to maintain them will fall on a man. Element of self-control will be a relationship. Now you're left with finding the quality of a man that can be endured.
- Submit yourselves for the Lord's sake to every authority instituted among men; whether to the King, as the supreme authority, or to governors who are sent by him to punish those who do wrong and to commend those who do right.
- Self-control is the discipline of what God instructs us to do.
- It cannot get any more evil than same gender sex... Homosexuality is back door...Stay in pursuit of Truth it will deliver one out of same gender affections.

66. At all relevant times, NORRIS, KELLEY and HOBBS, as well as other ADC officials, and each of them, were aware of the substance of DEWITT's teachings, as well as the curriculum he utilized to indoctrinate PAL participants.

67. On more than one occasion, Gothard visited McPherson and personally ministered to female inmates at the facility, an event authorized by NORRIS, KELLEY and HOBBS, and each of them, and of which they were aware at all relevant times.

68. In 1999, a female inmate, JANE DOE #1, alleged sexual misconduct against DEWITT.

69. In 1999, JANE DOE #1 informed an ADC official(s) of the allegations of sexual misconduct against DEWITT.

70. Prior to 2010, NORRIS, KELLEY, MAPLES, CAPEL, FAUST, BUDNIK, DYKES and DIXON, and each of them, were aware of the accusations of sexual misconduct alleged by JANE DOE #1 against DEWITT in 1999.

71. Prior to 2010, other ADC officials and employees, including, but not limited to, JOHN DOES ONE THROUGH TEN, and each of them, were aware of the accusations of sexual misconduct alleged against DEWITT in 1999 by JANE DOE #1.

72. DEWITT was never punished or disciplined regarding the sexual misconduct allegations made against him by JANE DOE #1 in 1999.

73. NORRIS, HOBBS, KELLEY, MAPLES, CAPEL, FAUST, BUDNIK and DYKES, and other ADC officials, including JOHN DOES ONE THROUGH TEN, and each of them, were aware of other allegations of improper conduct committed by DEWITT, which were made after the 1999 allegation by JANE DOE #1 and prior to 2014.

**Plaintiff's Arrival At McPherson And The First CRIPA Investigation Of
McPherson In November 2003**

74. In June 1999, in Criminal Case No. CR 1998-42, Plaintiff was sentenced to a term of life without parole for her alleged role in a 1997 homicide. Plaintiff was sent to McPherson to serve her term in November 1999.

75. Seeking spiritual guidance, and wishing to better herself, Plaintiff applied to PAL. On February 1, 2000, Plaintiff was accepted into the Program by DEWITT. Eventually, DEWITT seemed to favor Plaintiff, holding her out as an example of obedience. DEWITT frequently complimented Plaintiff, and assigned her to teach Bible lessons to PAL inmates. DEWITT told Plaintiff that he was grooming her to assume a leadership role in the Program.

76. On or about May 8, 2002, the United States Department of Justice (hereafter "DOJ"), initiated an investigation of the conditions of confinement at McPherson pursuant to the Civil Rights of Institutionalized Persons Act (hereafter "CRIPA"), 42 U.S.C. § 1997. The DOJ conducted on-site visits at the facility in July, August and September 2002.

77. In 2003, STACEY SMITH was a McPherson inmate who was serving a sixty (60) year prison conviction on drug charges. During her time as an inmate at the facility, STACEY SMITH was involved in PAL, under the supervision, training and guidance of DEWITT.

78. In 2003, DEWITT and STACEY SMITH, then an inmate at the facility, began an inappropriate sexual relationship, which was also unlawful, and in violation of ADC policy.

79. In 2003, CAPEL and DIXON learned of the unlawful sexual relationship between DEWITT and STACEY SMITH. Despite the fact that the sexual relationship was unlawful, and despite the fact that it constituted a violation of ADC policy, neither CAPEL nor DIXON reported the relationship, or did anything to terminate it.

80. KELLEY, NORRIS, MAPLES, CAPEL, FAUST, BUDNIK and DYKES, and each of them, were aware of the unlawful sexual relationship between DEWITT and STACEY SMITH, however, none of them reported the relationship, nor did anything to terminate it.

81. Other ADC officials and employees, including JOHN DOES ONE THROUGH TEN, and each of them, were aware of the unlawful sexual relationship between DEWITT and STACEY SMITH, however, none of them reported the relationship, nor did anything to terminate it.

82. By November 2003, the DOJ completed its CRIPA investigation of McPherson, and, in correspondence to Governor Mike Huckabee dated November 25, 2003, it notified the State of what it found to be unconstitutional conditions at McPherson, including inadequate medical and mental health care, and a failure to protect inmates from harm.

83. In its November 25 letter, the DOJ:

- a) advised the State that it had concluded that inmates at McPherson experienced deliberate indifference toward their serious medical needs;
- b) advised the State that it had concluded that inmates at McPherson received inadequate protection from physical harm and sexual misconduct;
- c) advised the State that it had concluded that there existed several ongoing serious problems, including lapses in supervision of staff and inmates, privacy violations, and substandard investigations;
- d) stated that the privacy violations it observed and the substandard misconduct investigations it reviewed created an atmosphere conducive to misconduct and abuse;
- e) described specific instances of sexual misconduct discovered during its investigation at McPherson, including thirteen (13) reported incidents of sexual misconduct or abuse, each occurring in areas that were poorly monitored and/or isolated;

- f) reported its finding that an internal affairs investigator ignored allegations of sexual misconduct by an officer at McPherson contained in fifteen (15) grievance reports which were filed over an extended period of time at the facility;
- g) advised the State that it had concluded that the physical layout of McPherson combined with the placement of security staff prevented direct supervision of certain areas of the facility, thereby increasing the risk of harm to inmates and staff;
- h) advised the State that it had concluded that sexual misconduct or abuse investigations were often ineffective and unprofessional, and that investigators failed to investigate misconduct discovered during unrelated investigations, and ended investigations prematurely when accused employees resigned or were terminated; and
- i) advised the State that it had concluded that McPherson had a significant problem with contraband being brought into the facility.

84. In its November 25 letter, the DOJ recommended remedial measures to address the constitutional deficiencies it identified, and to protect the constitutional rights of McPherson inmates. These measures were:

- a) improving the quality of medical care, including providing timely medical testing;
- b) implementing policies, procedures and practices to ensure that staff triage and response to mental health requests in a timely manner, and that they provide adequate ongoing mental health care;
- c) providing adequate correctional officer staffing and supervision to ensure inmate safety;
- d) installing security cameras in neglected areas of the facility for the protection of inmates;
- e) reviewing and revising selection criteria and training for investigators;

- f) reviewing and revising the overall investigative process to ensure that administrative and criminal investigations are handled appropriately;
- g) ensuring that sexual misconduct investigations do not terminate when a staff member is fired or resigns;
- h) ensuring that established protocols for reporting and investigating sexual misconduct allegations are followed consistently;
- i) establishing a policy for confidential reporting of sexual misconduct;
- j) conducting full-scale sexual misconduct or harassment investigations where appropriate; and
- k) ensuring that isolated areas within McPherson are adequately staffed and monitored.

85. In its November 25 letter, the DOJ advised if it and the State were unable to reach a resolution of the concerns articulated in the DOJ's letter, the United States Attorney General could opt to institute a CRIPA lawsuit in order to correct the noted deficiencies.

86. NORRIS was provided a copy of the November 25, 2003, DOJ correspondence to Governor Huckabee, and had actual notice of the contents of the letter around that time.

87. HOBBS, KELLEY, MAPLES, CAPEL, FAUST, BUDNIK, DYKES, DIXON, WHEELER and YANCEY, and each of them, were aware of the November 25, 2003 DOJ correspondence to Governor Huckabee, and had actual notice of the contents of the letter around that time.

88. In late August 2004, representatives for the State and the DOJ signed a Memorandum of Agreement (hereafter "Agreement"), of which KELLEY was a signatory, and KELLEY therefore had actual notice of the contents of the Agreement on or about August 24,

2004. NORRIS was also a signatory of the Agreement, and therefore had actual notice of the contents of the Agreement on or about August 24, 2004. The Agreement set a November 24, 2004 deadline for implementing the provisions contained in the Agreement.

89. HOBBS, KELLEY, MAPLES, CAPEL, FAUST, BUDNIK, DYKES, DIXON, WHEELER and YANCEY, and each of them, were aware that the State entered into the Agreement with the DOJ on or about August 24, 2004, and had actual notice of the contents of the Agreement around that time.

90. At all relevant times, despite the binding provisions of the Agreement, and despite the seriousness of the deficiencies prompting the DOJ recommendations, NORRIS, HOBBS and KELLEY, and each of them, failed to implement and adopt the DOJ recommendations, exhibiting deliberate indifference to the safety and well-being of McPherson inmates, including Plaintiff.

91. At all relevant times, despite the binding provisions of the Agreement, and despite the State's contractual obligation to remedy the deficiencies reported by the DOJ, NORRIS, HOBBS, KELLEY, MAPLES, CAPEL, FAUST, BUDNIK, DYKES, WHEELER, and DEWITT, and each of them, continued to operate the facility in the reckless and dangerous way it had, exhibiting deliberate indifference to the safety and well-being of McPherson inmates, including Plaintiff.

92. In 2004, STACEY SMITH was granted an early release by Governor Huckabee, at the behest of DEWITT, demonstrating the influence exercised by him within the ADC. No ADC official or employee objected to the granting of early release for STACEY SMITH, demonstrating the influence exercised by DEWITT at McPherson. DEWITT subsequently told

inmates that he was responsible for securing STACEY SMITH's early release due to his closeness to God, as well as to Governor Huckabee.

93. In 2005, despite knowledge of the prior inappropriate and unlawful sexual relationship between DEWITT and STACEY SMITH, the ADC, through NORRIS, HOBBS, KELLEY, FAUST, MAPLES, CAPEL, BUDNIK, DYKES, WHEELER and YANCEY authorized/endorsed STACEY SMITH to serve as a certified religious assistant (hereafter "CRA"), and she returned to McPherson, again demonstrating the influence exercised by DEWITT within the ADC.

94. Upon information and belief, the sexual relationship between DEWITT and STACEY SMITH when she was an inmate at McPherson, continued unabated up to, and beyond, her returning to McPherson as a CRA.

95. Once STACEY SMITH assumed her role as a CRA at McPherson, she was subject to all applicable ADC policies, and her sexual relationship with DEWITT constituted a violation of ADC policy.

96. While out on parole, STACEY SMITH developed her own prison ministry, Prison To Purpose, which she brought to McPherson to operate alongside PAL. In July 2006, Prison To Purpose, Inc. was registered with the State as a nonprofit corporation. At all relevant times, Prison To Purpose, Inc. lists as its corporate officers: STACEY SMITH (Director); DEWITT (Director); Chiree Bollinger (Director); Jim Bollinger (Chairman); Greg Dewitt (Chairman); and Vicki Dewitt (Treasurer).

97. At some point in time, Chiree Bollinger, Greg Dewitt and Vicki Dewitt, and each of them, were endorsed as CRAs at McPherson, and were given CRA badges which allowed them to travel in and out of the facility.

98. Prison To Purpose was authorized/endorsed by the ADC, and was heavily promoted by the ADC through official literature and pamphlets, and other means.

99. Through the efforts of KELLEY, FAUST, DIXON, DEWITT and STACEY SMITH, Prison To Purpose resulted in positive press attention for McPherson, the ADC and its officials and employees, including NORRIS, HOBBS and KELLEY.

100. In 2007, DEWITT and PAL associated with Bollinger Productions (hereafter "Bollinger"), a multimedia company that was retained to advance PAL, Prison To Purpose and to propagate DEWITT's teachings.

101. DEWITT forced a female inmate, JANE DOE #2, who was also one of his victims, to work on PAL production materials for Bollinger productions promoting Prison To Purpose.

102. Upon information and belief, KELLEY appeared in Bollinger videos which promoted Prison To Purpose and/or PAL.

103. Upon information and belief, FAUST appeared in Bollinger videos which promoted Prison To Purpose and/or PAL.

104. Upon information and belief, DIXON appeared in Bollinger videos which promoted Prison To Purpose and/or PAL.

105. Upon information and belief, MAPLES appeared in Bollinger videos which promoted Prison To Purpose and/or PAL.

106. Upon information and belief, DYKES appeared in Bollinger videos which promoted Prison To Purpose and/or PAL.

107. DEWITT pressured PAL participants, such as JANE DOE #2, to appear in Bollinger videos which promoted Prison To Purpose.

108. DEWITT was essential to maintaining this financially lucrative and beneficial relationship between PAL, Prison To Purpose, the ADC and Bollinger.

109. In January 2009, a female clerk at McPherson, JANE DOE #3, came forward and lodged a complaint against DEWITT, alleging inappropriate behavior during her training. NORRIS, HOBBS, KELLEY, MAPLES, CAPEL, WHEELER, YANCEY, and each of them, were aware of this complaint against DEWITT.

DEWITT's Repeated And Systematic Sexual Abuse Of Plaintiff

110. In 2010, HOBBS was named Director of the ADC, replacing NORRIS.

111. By this time, Plaintiff's involvement in PAL had given her a sense of accomplishment and belonging. By 2010, Plaintiff had earned a leadership role in PAL, and she taught Bible lessons to other inmates. At this time, PAL constituted Plaintiff's *de facto* family, with DEWITT occupying the patriarchal role. Plaintiff viewed DEWITT as a father figure. Plaintiff revered and trusted DEWITT, and further she sought not to disappoint or upset him. DEWITT was every bit the authority figure he described in his lessons. He controlled PAL participants, including Plaintiff, by a variety of manipulative and threatening methods.

112. In December 2010, DEWITT began to ask Plaintiff inappropriate questions that were sexual in nature. Around this time, DEWITT told Plaintiff that she had romantic feelings for him, and that this was normal because the training PAL provides to female inmates is like that of a wife. In December 2010, DEWITT began to touch Plaintiff inappropriately, and forced her to inappropriately touch him, which soon led to his forcing her to perform oral sex on him.

113. From December 2010 to June 2012, DEWITT ordered Plaintiff to report to his office once a week, where he would proceed to sexually assault her. In order to facilitate this planned, systematic abuse, DEWITT enlisted the assistance of other ADC officials and

employees, including, but not limited to, JOHN DOES ONE THROUGH TEN, who would clear Plaintiff at various checkpoints, enabling her travel between her barracks and DEWITT's office.

114. The repeated sexual assaults committed upon Plaintiff by DEWITT caused her physical and emotional pain and injuries.

115. Over the years, DEWITT repeatedly sexually abused a second McPherson inmate, JANE DOE #2, who was also a PAL participant.

116. Over the years, DEWITT repeatedly sexually abused a third McPherson inmate, JANE DOE #4, who was also a PAL participant.

117. In 2012, as reflected in ADC's own literature, the ADC identified continuing problems or deficits at its facilities, including:

- a) contraband being brought into ADC facilities;
- b) blind spots in ADC facilities;
- c) maintaining a digital archival system for maintaining videos of incidents at ADC facilities;
- d) reporting felonies to local prosecutors to pursue criminal prosecution for crimes committed within ADC facilities;
- e) timely security services and facilitation of internal investigation practices in order to prevent illegal activity in ADC facilities;
- f) staff training in regard to reporting serious incidents at ADC facilities;
- g) staff training in regard to recognizing mental illness and suicide prevention in ADC facilities; and
- h) the handling and reporting of inmate grievances, both formal and informal, in ADC facilities.

118. Around May 2012, DEWITT intensified his abuse of Plaintiff, and began to demand that she see him twice a week. From June 2012 to September 2014, DEWITT ordered

Plaintiff to come to his office twice a week. In order to guard against Plaintiff becoming pregnant by him, DEWITT brought contraband—in the form of birth control devices—into the facility every week.

119. In order to facilitate the use of birth control devices while sexually assaulting Plaintiff, DEWITT enlisted the willful assistance of ADC officials and employees, including, but not limited to, JOHN DOES ONE THROUGH TEN, and each of them.

120. Plaintiff frequently cried during and after these repeated sexual assaults. She often openly sobbed and appeared visibly upset when leaving DEWITT's office, and while observed by ADC employees, including JOHN DOES ONE THROUGH TEN, and each of them at various checkpoints, and at other times. The repeated sexual assaults committed upon Plaintiff by DEWITT caused her physical and emotional pain and injuries.

121. On one occasion, Plaintiff inadvertently observed DEWITT and JANE DOE #2 engaging in sexual activity and, when DEWITT saw Plaintiff the following day, he sternly told her not to say anything because it would destroy the PAL program if anyone found out.

122. On one occasion, an inmate at the facility, JANE DOE #5, inadvertently caught DEWITT in the act of committing sexual abuse on another female inmate. In order to silence and punish JANE DOE #5, DEWITT conferred with ADC officials, and had her transferred from McPherson to ADC's Wrightsville Unit (hereafter "Wrightsville").

123. On one occasion, JOHN DOE ONE was in close proximity to DEWITT's office, and inadvertently observed DEWITT's sexual abuse of Plaintiff, interrupting the criminal act, and causing DEWITT to quickly cover himself. Despite witnessing a clear instance of sexual abuse, JOHN DOE ONE did not address it, nor did he report it.

124. On another occasion, when Plaintiff inadvertently observed DEWITT and a female inmate, JANE DOE #4, engaging in sexual activity, DEWITT sternly told Plaintiff that she was replaceable, and threatened to remove her from PAL if she told anyone.

125. Throughout the period of her abuse, Plaintiff abided by DEWITT's pressure and threats, for years telling no one of the sexual abuse being committed by DEWITT. Throughout the period of Plaintiff's abuse, she feared severe negative consequences if she were to report the abuse, including physical violence from DEWITT and others.

126. During that same approximate time, between September 2010 and August 2015, over one hundred (100) ADC employees left their employ at McPherson in what the ADC classified as "Voluntary" "Termination." Upon information and belief, a significant percentage of these ADC employees were accused of sexual misconduct, but were allowed to resign rather than be properly investigated, involuntarily terminated and charged with crimes, where applicable.

127. For instance, upon information and belief, during this time frame, a male nurse at the facility was permitted to remain at the facility after multiple allegations of inappropriate behavior and sexual harassment by several female inmates, JANE DOES #6-8, surfaced.

128. Plaintiff asserts herein that allowing such employees to resign, and classifying the nature of such terminations as "voluntary," constitutes an effort by the ADC, through NORRIS, HOBBS and KELLEY, and each of them, to conceal evidence of unlawful acts committed by ADC employees at McPherson. Moreover, these acts of concealment reflect deliberate indifference to the safety and well-being of inmates at the facility, including Plaintiff.

Examples Of Sexual Misconduct And ADC Investigation Deficiencies
At ADC Facilities

129. Around the time of Plaintiff's sexual abuse, there were several serious problems involving officer misconduct reported at various ADC prisons which were consistent with the serious problems involving misconduct occurring at McPherson, and which reflected the deliberate indifference of NORRIS, HOBBS, KELLEY and WHEELER.

130. In March 2013, Wrightsville Deputy Warden Thomas Hurst (hereafter "Hurst") was terminated for his improper handling of a sexual harassment complaint by a female officer, JANE DOE #9. At that time, KELLEY was a member of an ADC panel that interviewed Hurst and other employees regarding JANE DOE #9's complaint. Hurst was made aware of the complaint on May 12, 2011, but did not submit a report to the proper authorities until nearly a month later.

131. An investigation found that Hurst failed to obtain written statements from the accused officer, failed to inform internal affairs and failed to follow instructions to investigate. The ADC found that Hurst failed or refused to conduct an investigation as mandated by policy. Hurst admitted that he did not follow established policy by taking the necessary steps to ensure that JANE DOE #9 would not face retaliation.

132. Hurst was one of five ADC employees who either resigned or were fired after the investigation, which also revealed that several high-ranking staff members had not followed policy in responding to JANE DOE #9's allegations. Wrightsville Warden Greg Harmon and Major Gary Burton resigned, while Hurst and Captain Larry Ragland were fired, along with Randy Calkins, the employee accused of sexually harassing the JANE DOE #9.

133. In 2013, ADC employee, Lieutenant Ronald Scott, resigned after several female inmates at the Hawkins Unit (which is part of Wrightsville), JANE DOES #10-12, accused him of engaging them in sexual activities.

134. As further evidence of the long-standing, deliberate indifference at the ADC, on or about January 17, 2016, Hurst was rehired by the ADC as deputy warden of the Ouachita River Unit, a decision approved by KELLEY, who was, by this time, Director of the ADC.

McPherson From 2013 To The Present

135. In January 2013, DEWITT was named 2012 “Employee of the Year” at the Annual Pinnacle Awards Ceremony. At that same ceremony, MAPLES was named 2012 Correctional Officer of the Year,” FAUST was named 2012 “Deputy/Assistant Warden of the Year,” and KELLEY was a recipient of a 2012 “Director’s Outstanding Service Award.”

136. In 2013, upon information and belief, STACEY SMITH was arrested, and charged with Driving While Intoxicated, which should have foreclosed her from continuing as a volunteer chaplain at McPherson as a matter of policy. However, reflecting the great authority bestowed upon DEWITT by the ADC, DEWITT contacted his friend, WHEELER, who at that time was the Head Chaplain at the ADC, and the two Chaplains conspired to conceal the fact of STACEY SMITH’s DWI arrest.

137. As a result of DEWITT’s influence and the conspiracy between DEWITT and YANCY, STACEY SMITH remained at the facility, and continued her ministry work with Prison To Purpose. In 2013, STACEY SMITH appeared on the radio program “Financial Issues With Dan Celia,” and spoke at the “True Woman Event: Changed Lives” in West Frankfort, Illinois, where she advanced her ministry and DEWITT’s teachings. These media appearances

were beneficial to the ADC, NORRIS, HOBBS, KELLEY, WHEELER, YANCEY, DEWITT and STACEY SMITH, and each of them.

138. In 2013, during one of the repeated incidents of sexual abuse committed by DEWITT against Plaintiff, he grabbed her hair and flung her around his office, an act of physical abuse, which caused Plaintiff great physical pain.

139. In 2014, NORRIS replaced HOBBS as Director of the ADC. In 2014, Greg Dewitt, DEWITT's son, began teaching Sunday morning services at McPherson.

140. In 2014, Gothard resigned from the CTI amid sexual harassment allegations from numerous young women. The women alleged Gothard engaged in "sexual abuse, sexual harassment and inappropriate/unauthorized touching." They claimed that they were sexually "groomed" by Gothard, and abused by him over the course of three decades.

141. In July 2014, JENNIFER SMITH, who was a Chaplain at the facility, became aware of the improper sexual relationship between DEWITT and STACEY SMITH. Despite the fact that the sexual relationship was unlawful, and despite the fact that constituted a violation of ADC policy, JENNIFER SMITH did not report the relationship, nor do anything to terminate it.

142. Other ADC employees and officials, including, but not limited to, JOHN DOES ONE THROUGH TEN, and each of them, were aware of the unlawful sexual relationship between DEWITT and STACEY SMITH, however, none of them reported the relationship, nor did anything to terminate it.

143. In August 2014, STACEY SMITH confronted Plaintiff, and asked her if she was engaging in a sexual relationship with DEWITT. Plaintiff responded that DEWITT was sexually abusing her. STACEY SMITH responded by telling Plaintiff that she forgave Plaintiff. She

further stated that everything was okay, and told Plaintiff not to worry. She instructed Plaintiff not to tell anyone about the abuse, and added that the Lord will forgive Plaintiff.

144. STACEY SMITH did not report the fact that DEWITT was sexually abusing an inmate, Plaintiff, nor did she do anything to prevent the abuse.

145. Around this time, STACEY SMITH began to openly talk about her improper relationship with DEWITT, making public and unavoidable what the Defendants, and each of them, had already known and had been conspiring to conceal at all relevant times.

146. In late August 2014, DEWITT returned from a trip to Utah to McPherson, with rumors about his sexual misconduct circulating around the facility. Around this time, Plaintiff overheard DEWITT yelling at JANE DOE #2 in a very angry tone about these rumors and other matters.

147. In September 2014, DEWITT's friend, WHEELER stated falsely that DEWITT "called and confessed to having an inappropriate physical relationship with a subordinate," in an effort to downplay the significance of DEWITT's unlawful acts, and to prevent any further investigation from proceeding.

148. In September 2014, even though his acts were sufficient to warrant involuntarily termination based on policy violations, DEWITT was allowed to resign from his position as Unit Chaplain. DEWITT's termination was officially classified as "Voluntary." Around this time, STACEY SMITH also left McPherson.

149. In December 2014, with DEWITT no longer on the physical premises, Plaintiff told fellow inmate, Bobbie Nicholson, about the abuse she suffered at the hands of DEWITT.

**The ADC, Through Certain Defendants, Retaliated Against Plaintiff,
And Failed To Protect Her From Retaliation**

150. On December 29, 2014, a few days after she spoke to Bobbie Nicholson, Plaintiff was summoned to DYKES' office. On that date, Plaintiff filed an official grievance pertaining to the sexual abuse committed by DEWITT. While Plaintiff was in the process of writing out her official statement, FAUST entered DYKES' office, ordered Plaintiff to stop writing and discontinued the interview.

151. FAUST excused Plaintiff from DYKES' office, informing her that Internal Affairs would handle the matter of her allegations of sexual abuse committed by DEWITT.

152. Per the ADC Inmate Handbook, once an allegation of sexual abuse is made by an inmate, such as Plaintiff:

“...[a]n immediate referral will be made to Health Services for a physical examination and completion of rape kit test. (Do not shower or clean yourself after the incident because it will interfere with the rape test results.) A swift and thorough investigation will be conducted. Evidence will be collected and stored. Rape complaints will be restricted to those individuals who investigate, provide assistance or prosecute to protect the victim. The victim will be placed in a safe place where he/she is not subject to retaliation. The unit's PREA Response Team will be notified and will assist the inmate. Statements will be taken from witnesses and findings will be documented. The case may result in discipline and/or be referred for criminal prosecution.

153. The sexual abuse protocol described in Paragraph 152 was not fully followed regarding Plaintiff's allegations of sexual abuse committed by DEWITT.

154. Despite FAUST's statement in DYKES' office, in the proximity of DYKES, Internal Affairs never contacted Plaintiff about her allegations of sexual abuse committed by DEWITT.

155. Though Plaintiff asserts that Defendants were previously aware of Defendant DEWITT's abuse of female inmates, her December 2014 statement provided Defendants, and each of them, with actual notice of the abuse she had suffered.

156. Starting in December 2014, Plaintiff became the victim of a series of instances of intimidation and retaliation committed by certain Defendants, other ADC officials, employees and agents, including, but not limited to JOHN DOES ONE THROUGH TEN, and each of them, as well as other DEWITT sympathizers.

157. In December 2014, Plaintiff asked to see a mental health therapist or abuse counselor, but her request was denied.

158. Though DEWITT resigned and left the physical premises of the facility in late 2014, NORRIS, HOBBS, KELLEY, MAPLES, FAUST, BUDNIK, DYKES and DIXON, and each of them, allowed DEWITT's immediate family to remain at McPherson, and to continue to facilitate PAL under the remote guidance and supervision of DEWITT.

159. From November 2014 to February 2016, Greg Dewitt, Vicki Dewitt and Lynn Dewitt Leonard, who are all immediate family members of DEWITT, continued DEWITT's teachings at McPherson. Attending church was mandatory in the Program, so Plaintiff was forced to listen to sermons of the son of her abuser on a weekly basis. Moreover, YANCEY played videos of DEWITT and STACEY SMITH during PAL classes, forcing Plaintiff to listen to her abuser and his accomplice, and watch images of them.

160. That videos of DEWITT were played for PAL participants after DEWITT's resignation constitutes an official endorsement and approval of his unlawful acts, and it created considerable fear and consternation among his victims, including Plaintiff, at all relevant times.

161. Though they no longer worked at the McPherson Unit, DEWITT and STACEY SMITH were permitted by YANCEY to continue to call in to the facility, and to make decisions about PAL teachings and curriculum until at least March 2015.

162. That DEWITT and STACEY SMITH were permitted by YANCEY to call in to the facility, and make decisions affecting PAL participants constitutes an official endorsement and approval of DEWITT and STACEY SMITH's unlawful and improper acts, and it created considerable fear and consternation among DEWITT's victims, including Plaintiff, at all relevant times.

163. DEWITT's family used their positions of authority at McPherson to manipulate, harass and intimidate Plaintiff throughout this time and beyond.

164. In late 2014 and early 2015, DEWITT's family pressured Plaintiff to communicate with DEWITT and STACEY SMITH. When Plaintiff stated that she did not wish to be in contact with either of them, DEWITT's family, and other ADC officials, employees and agents pressured her to do so anyway. DEWITT's family pressured Plaintiff to communicate with DEWITT, and to keep the details of the sexual abuse she suffered from becoming known outside of McPherson.

165. That DEWITT's family was allowed to pressure Plaintiff into communicating with her abuser after DEWITT's resignation constitutes an official endorsement and approval of DEWITT's unlawful acts, and it created considerable fear and consternation among his victims, including Plaintiff, at all relevant times.

166. In January 2015, KELLEY replaced NORRIS as Director of the ADC.

167. In January 2015, FAUST and BUDNIK were informed that DEWITT was continuing to harass and intimidate Plaintiff, but neither of them addressed the matter, nor reported it.

168. Upon information and belief, in 2015, YANCEY and JENNIFER SMITH became aware of specific allegations of inmates engaging in sexual activities in the showers of the facility, but they did not address it, nor report it. DIXON was aware of these inappropriate activities but did not report it either.

169. Around this time, despite the oppressive and untenable environment confronting her, Plaintiff did her best to continue to participate in PAL, as it constituted her *de facto* family, her existence and her only outlet for spiritual guidance. In early 2015, Plaintiff asked ADC officials to visit with an abuse counselor but she was again refused.

170. In January 2015, JENNIFER SMITH instructed Plaintiff not to make waves in PAL, and tried to dissuade Plaintiff from reporting the sexual abuse she suffered to persons who may contact the authorities or media.

171. In January 2015, with JENNIFER SMITH present, YANCEY chastised Plaintiff for reporting the sexual abuse she suffered at the hands of DEWITT. YANCEY sternly told Plaintiff that he wished she had kept quiet about the matter. YANCEY further told her that DEWITT was a close friend of his, that the matter was serious, and that DEWITT could go to prison over it.

172. Later in January 2015, YANCEY sent an official “Arkansas Department of Correction Newport Prison Complex Inter-office/Inter-unit Communication” to Plaintiff, wherein he cautioned her against complaining about having to watch videos of DEWITT, and threatened to “re-evaluate [her] future in the PAL Program” if she continued to complain.

YANCEY sternly warned Plaintiff: “you and I have had this discussion prior to today. I do not want you doing anything at this time but attending class.” (underline in original) He instructed Plaintiff, “[f]or now, just settle down, stay off the radar. Use this time to pray and draw near to the Lord for direction.”

The Second CRIPA Investigation Of McPherson

173. On June 11, 2015, the DOJ announced that it would initiate another CRIPA investigation of McPherson, its second in twelve (12) years, and declared the investigation focus to be “whether women confined at McPherson have been subjected to sexual abuse and sexual harassment by correctional staff.”

174. In June 2015, the DOJ stated that it had received numerous allegations of sexual abuse and sexual harassment of prisoners by multiple members of McPherson staff. According to the DOJ, the allegations against McPherson staff members were: a) sexual intercourse and other sexual acts with prisoners; b) exchanging commissary money for sexual favors; c) inappropriately watching prisoners while they shower or change clothes; d) commenting on inmates’ private parts and; e) at times, taking photos or video of inmates for reasons unrelated to correctional goals.

175. The problems at McPherson identified by the DOJ in 2015 reflect serious deficiencies in the reporting and investigation of sexual misconduct at McPherson for years prior thereto.

Plaintiff Continues To Suffer Retaliation With No Protection From The ADC

176. Around the time of the June 2015 announcement of the DOJ investigation, Plaintiff became the target of further scorn and intimidation by other PAL participants and inmates.

177. Around this time, ADC officials and employees, including, but not limited to, JOHN DOES ONE THROUGH TEN, and each of them, also retaliated against Plaintiff.

178. At all relevant times, KELLEY, FAUST, BUDNIK, DYKES, DIXON, WHEELER YANCEY, JENNIFER SMITH, and other ADC officials, including, but not limited to, JOHN DOES ONE THROUGH TEN, and each of them, were aware of the retaliation suffered by Plaintiff, but did nothing to prevent it, or to protect Plaintiff.

179. On July 2, 2015, JENNIFER SMITH asked Plaintiff if she was going to file a civil lawsuit against DEWITT, and pressured her not to do so. She then criticized Plaintiff for having a “victim mindset.”

180. Finally, in August 2015, approximately eight (8) months after writing out a formal statement in DYKES’ office which detailed the sexual and mental abuse she suffered at the hands of DEWITT, Plaintiff was permitted by the ADC to see a victim’s advocate.

181. Upon learning of the DOJ investigation of sexual abuse at McPherson, one former PAL participant, JANE DOE #13, on August 29, 2015 wrote: “...I’m not surprised...And to hear about the other sexual misconduct isn’t surprising either...There were a lot of things that didn’t make sense there were many male guards who walked our open dorms...A lot of over familiarization lots of personal questions...if you didn’t engage in conversation with a [correctional officer] you had an attitude problem...What my tattoo means and if I’m married or not is really no ones business...To pull an inmate out of the chow line because she refuses to answer your personal questions to humiliate her is outta line. The ADC handbook has no reference as to how staff is to conduct them self so unless you go to the law library and look up federal laws that apply to all institutions to make a reference you’re fucked.”

182. In September 2015, JENNIFER SMITH and YANCEY, attempted to frustrate Plaintiff's cooperation with the then-developing criminal investigation of DEWITT, sequestering Plaintiff after her interactions with the Sheriff's Office and Prosecutors, and forcing her to relay to them what was said during the interactions.

183. In December 2015, JENNIFER SMITH and YANCEY still sought to protect DEWITT from criminal prosecution, and continued to endeavor to silence the victims of his sexual abuse, including Plaintiff, to achieve these ends.

184. In December 2015, JENNIFER SMITH verbally abused Plaintiff, intimidating her and accusing her of false "self-pity" related to the sexual abuse she suffered.

185. On or about December 17, 2015, DEWITT was charged with fifty (50) counts of Third Degree Sexual Assault upon three (3) PAL participants at McPherson, including Plaintiff.

186. On December 17, 2015, JENNIFER SMITH came to Plaintiff's barracks, and addressed PAL participants about DEWITT's arrest. She told the inmates, including Plaintiff, that "we have all fallen short of God's glory and if you took a woman that committed the worst crime ever like killing her baby, we are no different." She continued that "Just because your last name is DEWITT, it doesn't mean you are bad. We've all messed up."

187. On December 28, 2015, JENNIFER SMITH summoned Plaintiff to her office, where Plaintiff reported that inmates were harassing her as a result of the DEWITT matter. JENNIFER SMITH responded by asking Plaintiff why she was slandering her to PAL volunteers. JENNIFER SMITH mocked Plaintiff's counseling, telling her that it "allows [Plaintiff] to wallow in self-pity and [she] only goes out there because they will feed that self-pity."

188. On December 30, 2015, JENNIFER SMITH again summoned Plaintiff to her office, and again questioned her about the prospects of a potential civil lawsuit stemming from the sexual abuse she suffered. JENNIFER SMITH told Plaintiff that she questioned her motives, and again chastised her decision to seek mental health treatment. She aggressively asked Plaintiff “what do you have against [DEWITT’s] family?”

189. On December 31, 2015, JENNIFER SMITH informed Plaintiff that she had removed Plaintiff from her PAL teaching assignment effective immediately. JENNIFER SMITH told Plaintiff “this is not retaliation...I just don’t want you up there teaching forgiveness when you are not practicing it.”

190. In July 2016, DEWITT pled guilty to three (3) counts of Third Degree Sexual Assault. DEWITT was sentenced to five (5) years in prison.

Conclusion

191. In summary, Plaintiff was sexually, mentally and physically abused by DEWITT from December 2010 through September 2014. She was physically assaulted by DEWITT on hundreds of occasions. The mental abuse she suffered consisted of threats, ridicule, intimidation, belittling and yelling, among other acts.

192. Throughout the time of the abuse committed by DEWITT, he repeatedly demanded that Plaintiff keep quiet about the abuse, and not tell anyone. DEWITT told Plaintiff that if anyone found out about the abuse, it would destroy the Program, and he threatened and manipulated Plaintiff in other ways.

193. Plaintiff has also suffered deliberate acts of intimidation and retaliation committed by ADC officials and employees, including, but not limited to, JOHN DOES ONE THROUGH TEN, and each of them, as well as by fellow inmates from approximately December 2014 to the

present. Despite actual and constructive notice, neither the ADC nor any of the Defendants did anything to protect Plaintiff from the years of abuse or the retaliation she suffered, exhibiting deliberate indifference.

194. The abuse, intimidation, retaliation and deliberate indifference that Plaintiff suffered was part of a pattern identified by the DOJ as early as November 2003 which was never appropriately addressed or remedied, and which continued unabated at McPherson up to, and beyond, June 2015.

195. The liability Plaintiff alleges herein against Defendants, and each of them, is not derivative, but direct, and based on their own personal misconduct.

COUNT I
DEWITT
FOR CRUEL AND UNUSUAL PUNISHMENT
IN VIOLATION OF THE EIGHTH AMENDMENT

196. Plaintiff hereby incorporates and re-alleges Paragraphs 1 through 195 as though fully alleged in Count I.

197. The Eighth Amendment protects against cruel and unusual punishments, *i.e.*, the unnecessary and wanton infliction of pain.

198. Neither sexual assaults nor physical abuse is a legitimate part of a prisoner's punishment, and the substantial physical and emotional harm suffered by a victim of such abuse are compensable injuries under the United States Constitution.

199. Any reasonable corrections official or employee, like DEWITT, knew or should have known in 2010 that sexually assaulting an inmate would violate the inmate's constitutional rights.

200. DEWITT's repeated sexual, mental and physical abuse of Plaintiff was not applied in a good faith effort to maintain or restore discipline, but rather, maliciously and sadistically for the purpose of causing harm.

201. DEWITT's repeated sexual, mental and physical abuse of Plaintiff served no legitimate penological purpose, and constitutes cruel and unusual punishment.

202. DEWITT's conduct was malicious and sadistic, and it proximately caused a deprivation of the rights, privileges and immunities secured to Plaintiff by the Eighth and Fourteenth Amendments to the United States Constitution, and laws enacted thereunder.

203. DEWITT's conduct caused Plaintiff physical and emotional injuries and pain.

204. Therefore, DEWITT is liable in damages to Plaintiff pursuant to 42 U.S.C. § 1983, including attorney's fees, costs and punitive damages.

COUNT II
ALL DEFENDANTS
FOR FAILURE TO PROTECT, FAILURE TO SUPERVISE
AND RETALIATION—42 U.S.C. § 1983

205. Plaintiff hereby incorporates and re-alleges Paragraphs 1 through 204 as though fully alleged in Count II.

206. At all relevant times, Plaintiff had a protected liberty interest in her bodily integrity, and a constitutional right to be secure in her person.

207. Plaintiff was incarcerated and, therefore, had to rely on the Defendants for her ultimate protection and safety, as well as to properly supervise DEWITT so that he did not harm female PAL participants, including Plaintiff.

208. Based on DEWITT's employment history, and other information, Defendants knew, or should reasonably have known, the substantial risk that DEWITT posed to female PAL participants, including Plaintiff, in terms of sexual misconduct. Despite this knowledge, and

with deliberate indifference to Plaintiff's need to be protected from DEWITT, Defendants failed to protect Plaintiff from him, proximately causing her physical and emotional injuries and pain.

209. Defendants allowed DEWITT unfettered access to his victims, including Plaintiff, and permitted, and facilitated, repeated instances of DEWITT's sexual abuse on Plaintiff.

210. Moreover, after it was known that DEWITT had engaged in sexual misconduct, had violated ADC policy and had sexually abused Plaintiff, Defendants did nothing to protect her from DEWITT or subsequent retaliation.

211. The filing of disciplinary charges against an inmate is actionable under § 1983 if done in retaliation for the inmate having filed a grievance under established procedures.

212. The acts and omissions of Defendants, and each of them, in failing to supervise, in failing to protect against abuse and in failing to protect against retaliation, proximately caused a deprivation of the rights, privileges and immunities secured to Plaintiff by the Eighth and Fourteenth Amendments to the United States Constitution and laws enacted thereunder. With this conduct, the Defendants, and each of them, showed a reckless or callous indifference to the federally-protected rights of Plaintiff.

213. The acts and omissions of the Defendants, and each of them, were in violation of the Eighth and Fourteenth Amendment, including Plaintiff's right to due process. Therefore, Defendants, and each of them, are liable to Plaintiff in damages pursuant to 42 U.S.C. § 1983, including attorney's fees, costs and punitive damages.

COUNT III

**NORRIS, HOBBS, KELLEY, MAPLES, CAPEL, FAUST, BUDNIK,
DYKES, DIXON, WHEELER AND JOHN DOES ONE THROUGH TEN
FOR PERMITTING A PATTERN OF WIDESPREAD
SEXUAL MISCONDUCT AT MCPHERSON—42 U.S.C. § 1983**

214. Plaintiff hereby incorporates and re-alleges Paragraphs 1 through 213 as though fully alleged in Count III.

215. At all relevant times, there existed at McPherson a pattern of sexual misconduct by ADC officials and employees, as well as a concurrent problem regarding investigations. These acts and omissions were unconstitutional, and included:

- a) failure to address inmates' serious medical needs, and to protect them from physical harm and sexual misconduct;
- b) serious lapses in supervision of staff and inmates, privacy violations, and substandard misconduct investigations;
- c) an atmosphere conducive to misconduct and abuse;
- d) problems with the physical layout of McPherson, combined with the faulty placement of security staff in certain areas of the facility, which increased the risk of harm to inmates and staff;
- e) the prematurely ceasing of misconduct investigations due to the resignation or termination of accused employees; and
- f) a significant problem with contraband being brought into the facility.

216. At all relevant times, Defendants were aware, or should reasonably have been aware in the course of their duties, of the existence of the serious problems at McPherson which were identified by the DOJ during its investigations, *inter alia*.

217. At all relevant times, Defendants were aware, or should reasonably have been aware in the course of their duties, of the existence of prior allegations of sexual misconduct against DEWITT, and systemic sexual misconduct at McPherson, and in ADC prisons generally.

218. Despite this knowledge, Defendants failed to appropriately modify ADC policies and employee conduct to fully comply with the DOJ's recommendations.

219. The deliberate indifference of NORRIS, HOBBS, KELLEY, MAPLES, CAPEL, FAUST, BUDNIK, DYKES, DIXON, WHEELER and JOHN DOES ONE THROUGH TEN, and each of them, is further reflected in a pattern of allowing ADC officials and employees accused of sexual misconduct to resign, rather than be terminated or face criminal charges.

220. At all relevant times, this improper custom served to conceal the underlying pattern of sexual misconduct from the public and media, and fostered an environment where ADC officials and employees believed they could commit sexual misconduct with impunity, or alternatively, face relatively weak discipline, at worst.

221. At all relevant times, NORRIS, HOBBS, KELLEY, MAPLES, CAPEL, BUDNIK, DYKES, DIXON and FAUST, and each of them, exhibited a deliberate indifference to, or tacit authorization of, this pattern of sexual misconduct, despite notice of same to each of them.

222. This pattern of acquiescence to sexual abuse and misconduct was so pervasive and well-settled as to constitute a custom with the force of official policy.

223. This custom was the moving force behind the violations of Plaintiff's constitutional rights committed by DEWITT, and each of them, and proximately caused Plaintiff's physical and emotional injuries and pain. The custom described above also proximately caused a deprivation of the rights, privileges and immunities secured to Plaintiff by the Eighth and Fourteenth Amendments to the United States Constitution, including due process, and laws enacted thereunder.

224. As a result of the customs described above, Plaintiff was subjected to cruel and unusual punishment, and as a result, NORRIS, HOBBS, KELLEY, MAPLES, CAPEL, FAUST, BUDNIK, DYKES, DIXON, WHEELER and JOHN DOES ONE THROUGH TEN, each of them, are liable to Plaintiff in damages under 42 U.S.C. § 1983, including loss of liberty interest, attorney's fees, costs and punitive damages.

COUNT IV
**ALL DEFENDANTS FOR CONSPIRACY
TO INTERFERE WITH CIVIL RIGHTS**

225. Plaintiff hereby incorporates and re-alleges Paragraphs 1 through 224 as though fully alleged in Count IV.

226. At all relevant times, there existed at McPherson a civil conspiracy among Defendants. The purpose of the conspiracy was to conceal the sexual abuse being committed by DEWITT against his victims, including Plaintiff, acts which directly and indirectly violated her civil rights, including those protected by the Eighth and Fourteenth Amendments. As described in Plaintiff's Paragraphs 1-224, Defendants, and each of them, committed overt acts in furtherance of the object of the alleged civil conspiracy.

227. As a result of the acts described above, Plaintiff's constitutional rights were violated and therefore, Defendants, and each of them, are liable to her in damages under 42 U.S.C. § 1985, including loss of liberty interest, attorney's fees, costs and punitive damages.

COUNT V
**DEWITT, YANCEY, STACEY SMITH AND
JENNIFER SMITH FOR THE TORT OF OUTRAGE**

228. Plaintiff hereby incorporates and re-alleges Paragraphs 1 through 227 as though fully alleged in Count V.

229. As averred above, DEWITT repeatedly sexually abused Plaintiff over the course of four (4) years, manipulating her by virtue of the cultish religious program the ADC allowed into the facility.

230. Then, in an effort to protect DEWITT and hide the abuse to which he subjected Plaintiff, YANCEY, STACEY SMITH and JENNIFER SMITH, claimed inmate counselors, who purported to provide pastoral care and spiritual guidance to McPherson inmates, further mentally abused Plaintiff, and encouraged her to conceal the repeated sexual abuse she suffered.

231. With this conduct, DEWITT, YANCEY, STACEY SMITH and JENNIFER SMITH, and each of them, intended to inflict emotional distress on Plaintiff, or knew or should have known that emotional distress was the likely result of their individual conduct. The conduct of DEWITT, YANCEY, STACEY SMITH and JENNIFER SMITH, and each of them, was extreme and outrageous, beyond all possible bounds of decency and was utterly intolerable in a civilized society. The actions of DEWITT, YANCEY, STACEY SMITH and JENNIFER SMITH, and each of them, are the cause of Plaintiff's distress, and the emotional distress sustained by her is so severe that no reasonable person could be expected to endure it.

WHEREFORE, Plaintiff prays for judgment against DEWITT, YANCEY, STACEY SMITH and JENNIFER SMITH, and each of them, in an amount which will fully and fairly compensate Plaintiff for damages suffered.

WHEREFORE, Plaintiff, CAROYLN ARNETT, by and through her attorneys, LAUX LAW GROUP, requests judgment against the Defendants and each of them:

1. That Defendants be required to pay Plaintiff's compensatory damages;
2. That Defendants be required to pay economic and non-economic damages, including but not limited to loss of liberty interest and mental anguish;

3. That Defendants be required to pay punitive damages;
4. That Defendants be required to pay reasonable litigation costs and attorney fees per 42 U.S.C. § 1988; and
5. That Plaintiff receive any other such relief as this Honorable Court deems just and proper.

Respectfully submitted,



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