

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: **1:06-CV-01048-WDM-CBS**

KALIE McARTHUR, a mentally disabled person,
by and through her parents and legal guardians,
JAMES McARTHUR and CINDY STARR,

Plaintiff,

v.

ACADEMY SCHOOL DISTRICT TWENTY;
BOARD OF EDUCATION OF ACADEMY SCHOOL
DISTRICT TWENTY;
GIL BIERMAN, individually and in his official capacity as
principal of Rampart High School in ACADEMY SCHOOL
DISTRICT TWENTY;
EMILY SZWARC, individually and in her official capacity as
a special education teacher for ACADEMY
SCHOOL DISTRICT TWENTY;
LORI WRIGHT, individually and in her official capacity as a
para-professional for ACADEMY SCHOOL
DISTRICT TWENTY; and
DOES 1 THROUGH 10, who are unknown persons,

Defendants.

COMPLAINT

Plaintiff, Kalie McArthur, a mentally disabled person, by and through her parents and legal guardians, James McArthur and Cindy Starr, and her attorneys at Weeks & Luchetta, LLP, submits her Complaint against the Defendants.

1. Parties and Jurisdiction

1. At the time of filing this Complaint, Kalie McArthur is 20 years old, and she is mentally disabled. She is a resident of El Paso County, Colorado. She was a special education

student in September 2004 at Rampart High School in El Paso County, Colorado. She was also a special education student under the supervision of an Academy School District Twenty employee in February 2006 at a facility known as “Community Intersections” in El Paso County, Colorado.

2. James McArthur and Cindy Starr are the parents and legal guardians of Kalie McArthur.
3. Academy School District Twenty (hereinafter “D-20”) is a governmental entity which operates Rampart High School in El Paso County, Colorado.
4. The School Board of Academy School District Twenty governs and controls the policies of D-20.
5. At all times material hereto, Gil Bierman was the principal of Rampart High School, and, upon information and belief, he supervised Emily Szwarc and oversaw discipline of students at Rampart High School. At all times material hereto, Mr. Bierman was an employee of D-20.
6. Emily Szwarc was a special education teacher at Rampart High School, and she was the teacher for Kalie McArthur in August and September 2004. At all times material hereto, Ms. Szwarc was an employee of D-20.
7. Lori Wright was a para-professional for D-20, and she was assigned to provide one-on-one supervision of Kalie McArthur at a facility known as “Community Intersections.” At all times material hereto, Ms. Wright was an employee of D-20.
8. This Complaint is based on incidences which occurred in El Paso County, Colorado in September 2004 and February 2006.

9. This is a civil action alleging a violation of the United States Constitution for which Plaintiff seeks redress under 42 U.S.C. § 1983 and for which this Court has original jurisdiction under 28 U.S.C. § 1331.

II. Background Information Regarding Kalie McArthur

10. Kalie McArthur was born on January 22, 1986. She has severe mental disabilities, and she has an IQ of about 50. She has been diagnosed with Pyrimidine Catabolism termed PNDD (a metabolic disorder which causes her to metabolize purines too quickly), Seizure Disorder, Ataxia (dizziness), Developmental Delays, and Obsessive Compulsive Behaviors. Due to Kalie McArthur's medical condition, she has to maintain a strict diet.
11. At the time of the sexual assault at Rampart High School (which is described in Section IV, *infra*), Kalie McArthur was 18 years old, and she was functioning at the level of approximately a 3 or 4 year old. She was able to dress herself and perform simple personal hygiene. She was loving like a toddler without a sense of boundaries. She trusted everyone and would talk to anyone, including total strangers. This situation made Kalie McArthur very vulnerable to abuse.
12. Due to Kalie McArthur's medical condition, level of functioning and vulnerability to abuse, and it was **very important that she have adult supervision at all times.**
13. During the 2002-2003 school year, Mr. Bierman and Ms. Szwarc became well aware of Kalie McArthur's mental disability, medical condition and vulnerability to abuse.
14. Because of Kalie McArthur's intellectual and functional capacity, plus her medical problems, she was a special education student in the Severe Needs classroom at Rampart

High School during the fall of 2004. She was reliant on full-time adult supervision in all environments.

15. On October 29, 2003, D-20 completed an Individual Educational Plan (IEP) regarding Kalie McArthur, which states:

Social/Emotional/Adaptive Behavior

Strengths:

Kalie is very sociable

Needs:

To understand personal space
Differentiate between people with whom she should talk to versus not talk to

Physical/Motor and Physical/Health

Needs:

10/03
Restricted diet
...
Open communication between home and school
Adult supervision at all times

Cognitive

Strengths:

Kalie enjoys working with others and accepts the help of staff and field trainers readily

16. On February 18, 2004, the School Psychologist for Rampart High School, Lisa Webb, Ed.S, NCSP, sent a letter to Resource Exchange. In the letter, Ms. Webb listed Kalie McArthur's diagnoses and stated:

Kalie's Seizure Disorder requires that **an adult must be present with her at all times while in school.** ... Due to Kalie's reliance on full-time adult supervision in all environments, Kalie presents as a student who needs significant support much more than other children her age.

17. On May 5, 2004, D-20 completed another IEP for Kalie, which states:

Social/Emotional/Adaptive Behavior:

Strengths:

Kalie is very sociable
Sweet, lovable, affectionate
Good attendance
Responds well to consistent limits
Liked by peers
Has adjusted well to her environment
Strong family support
Parent report: loving, friendly, happy, excited about family events

Needs:

To understand personal space
Differentiate between people with whom she should talk to versus not talk to
Needs consistent limits
May need strategies to help her obsessive, repetitive and ritualistic behaviors
Parent concerns: safety, health and future

Physical/Motor and Physical Health

Needs:

4/04
Restricted diet
Monitor effectiveness of present medication and dosage
Confidential health care plan
Open communication between home and school
Adult supervision at all times

III. The D-20 “Field Trainer” Selected to Supervise Kalie McArthur

18. At Rampart High School, Kalie McArthur was to have full-time adult supervision, according to her IEPs and the School Psychologist, Lisa Webb, Ed.S., NCSP. It was well known that Kalie McArthur did not understand boundary issues, was affectionate and trusted everyone.
19. Emily Szwarc utilized an official D-20 policy and program of selecting students at Rampart High School to serve as “field trainers” for special education students. The “field trainers” were assigned to assist and encourage special education students during the day.
20. Ms. Szwarc selected a 15-year-old boy to serve as D-20’s “field trainer” for Kalie McArthur. He was directed to spend one-on-one time with her, escort her around the school’s campus, supervise her, and was allowed to sometimes be with her in settings **without adult supervision**. Therefore, Kalie McArthur was without the mandated adult supervision while in the company of D-20’s “field trainer” because, rather than the student trainer acting as an adjunct to an adult supervisor – the student was sometimes the **only** supervisor.
21. The students who were to act as “field trainers” were **not screened or trained** by D-20 prior to being assigned to work with special education students.
22. The D-20 “field trainer” assigned to Kalie McArthur was not an appropriate choice. First, he was a **male teenager**, and Kalie McArthur was particularly vulnerable to sexual abuse. Second, the “field trainer” had been previously arrested for **shoplifting**. Third, according

to D-20's records, the "field trainer" had several **disciplinary incidents** at school during August and September 2004 (before the sexual assault), including truancy, "**staff disrespect,**" and "**fighting**"; and the "field trainer" had a history of being **suspended from school over 20 times** before the sexual assault. Fourth, during the previous year at school, the "field trainer" had all F's with the exception of one "N/C," which meant he had a **0.0 G.P.A.** All of these facts indicate this teenage boy did not exercise good judgment or respect laws and rules. Also, the "field trainer" was not a good candidate for successful training, if such had been offered by D-20. He should not have been selected as D-20's "field trainer" for Kalie McArthur.

IV. The "Field Trainer's" Sexual Assault of Kalie McArthur on September 14, 2004

23. Despite Kalie's condition and vulnerability, D-20 permitted the "field trainer" to be **alone with Kalie without adult supervision on September 14, 2004.** The "field trainer" was supposed to be supervising her while she cleaned marks on a floor. Instead of doing that, he lead her to a stairwell on the school's premises and sexually abused her.
24. A D-20 coach discovered them in the stairwell. He reported that the "field trainer" was sitting on the stairs with his pants pulled down, and Kalie McArthur was straddling "the field trainer" on his lap facing him. Kalie McArthur was naked from the waist down. The coach saw her moving her hips in a thrusting motion and could see her bare buttocks. The coach told them to pull their pants up, and he escorted the students to the discipline office at Rampart High School.

25. After repeated questioning, “the field trainer” admitted that he and Kalie McArthur had engaged in sexual activity. He admitted they had pulled their pants down, and she was straddling him. He admitted his penis was exposed and was erect. He said Kalie was rubbing against his penis. He said he had his hands on her breasts over her clothing.
26. Cindy Starr received a call requesting that she come to school that day. When she arrived at school, many people were there to deal with this incident. Ms. Starr was told about the incident and asked to take Kalie McArthur to the hospital. Ms. Starr had never seen her daughter behaving the way she was that day. Kalie McArthur was confused and scared by all the people reacting to this situation. Ms. Starr thought her daughter had been hurt because she had a big scab on her face. Kalie McArthur was really nervous, and her repetition of what was being said to her could not be stopped; she did not know whether what she had done was bad or if she was in trouble, but she was very stressed.
27. During the investigation, Ms. Szwarc told the Police that Kalie McArthur was mentally disabled and that she “is very trusting.”
28. Afterwards, a D-20 spokesperson, Nanette Anderson, publicly admitted that students are not screened before being appointed as “field trainers” for special education students like Kalie McArthur.

V. Probable Sexual Abuse by Other Boys at Rampart High School

29. During therapy, Kalie reported that she had been previously taken to a room where she was groped and poked with a stick “where it did not belong.” She also said she had been pinched on her “nonie and boobs.” It was known that Kalie McArthur had bruises on her

butt and back before the sexual assault, but her mother had no idea that they probably came from abuse by boys at school.

VI. Aftermath of the Sexual Assault

30. Before the incident, Kalie McArthur's world was filled with caring people whom she could trust. She was loving and affectionate towards everyone, and she was happy. She was relatively easy to handle from a caregiver's standpoint, and her parents, grandmother or an older "sitter" could take care of her. After the incident, Kalie's quality of life has been greatly diminished, and she is full of anxiety, insecurity and fear. Kalie has become difficult to handle – making life very hard for her family and her other caregivers.
31. D-20 immediately removed Kalie from Rampart High School, and she began attending "transition classes" at Community Intersections, which provides these classes on a contract basis for D-20. Because Kalie is mentally disabled, D-20 is legally required to pay for her to attend "transition classes" until she is 21 years old.
32. Kalie McArthur began seeking the ability to control something after what felt like an out-of-control experience. The two things she could control were movement and eating. Kalie McArthur became exceedingly robotic in her movements and, at times, could not move from A to B. She was no longer sweet and loving like she was, but she appeared numb. She also would not eat. She is very small, approximately the size of a twelve year old. She weighed 105 pounds at the time of the sexual assault, and she dropped to eighty-five pounds afterward.

33. Kalie McArthur began having **severe behavior problems after the sexual assault**, and her care-givers began to have great difficulty caring for her.
34. After the sexual assault, Kalie McArthur began to be **self-abusive** by clawing and scratching herself on a fairly routine basis. She began to experience **significant anxiety, insecurity and fear**. She began to be especially **fearful of males**, and she started being abusive towards males by hitting them, staring at them and groping them. Also, Kalie McArthur began **urinating on herself** after the sexual assault on a frequent basis when she becomes upset or anxious.
35. According to Kalie McArthur's counselor, Kalie has identified emotions surrounding her victimization. Since the sexual assault, her behavior has deteriorated, which indicates she was traumatized by the abuse.

VII. Future Care Needs as a Result of the Sexual Assault

36. Kalie McArthur's counselor states Kalie will not mature or grow emotionally to be able to deal with the sexual assault. Unlike other young women who are sexually assaulted, Kalie McArthur is mentally disabled, and, she is ill equipped to deal with this type of sexual exploitation.
37. D-20's Transition Services Coordinator, Carol Roche, wrote a letter in late May 2006 that documents Kalie McArthur's deteriorating emotional state after the sexual assault and her need for intensive and expensive care:

Due to **regression in Kalie's functional level during the 05-06 school year**, Kalie is not able to fully participate in community activities offered through Transition. Her functional level requires an **increased amount of direct care in order to keep her safe. The environments in which she is able to function and remain safe are also becoming more and more narrow.**

38. According to Kalie McArthur's counselor and experts in the field, Kalie needs much more intensive and expensive care by qualified providers as a result of the sexual assault.
39. According to Kalie McArthur's counselor and experts in the field, there is no indication that Kalie will get to the point where she does not need this level of support.

VIII. Incident of February 8, 2006 Involving Lori Wright

40. It was well known by D-20 and its special education staff that Kalie McArthur was experiencing severe anxiety, fear, distrust, feelings of insecurity and behavioral problems after the sexual assault. D-20 was well aware of those problems when it hired Lori Wright to work with Kalie on a one-on-one basis. Although Ms. Wright was employed and paid by D-20, she worked with Kalie McArthur at Community Intersections.
41. It was well-known by D-20, the special education staff at D-20 and Lori Wright that in order to remediate Kalie McArthur's difficulties since the sexual assault, she required a great deal of reassurance of safety, positive interaction, direct instruction and patience by all persons coming into contact with her.
42. Ms. Wright began supervising Kalie McArthur in December 2005 and began having problems handling her soon thereafter. On several occasions, Ms. Wright asked other staff members at Community Intersections to work with Kalie McArthur instead of doing it herself. It is apparent that Ms. Wright did not have the proper experience, skills, patience and/or ability to care for Kalie.

43. Ms. Wright became increasingly frustrated with Kalie McArthur during January 2005.
44. On February 1, 2006, the staff at Community Intersections had a meeting with Ms. Wright to discuss the problems she was having caring for Kalie McArthur. Instead of attempting to work with the staff at Community Intersections and trying to learn how to care for Kalie McArthur, Ms. Wright stormed out of the meeting and refused to listen. Ms. Wright was later found crying in a closet.
45. On February 2, 2006, Ms. Wright worked with Kalie McArthur and became very frustrated with her. Ms. Wright left Community Intersections that day around noon - in tears.
46. On Monday, February 6, 2006, Ms. Wright met with Kalie McArthur in the morning for about 30 minutes to review her rules. Afterwards, Ms. Wright asked the staff at Community Intersections to work with Kalie McArthur.
47. On Tuesday, February 7, 2006, Ms. Wright again failed to work with Kalie McArthur, and the staff at Community Intersections had to do it.
48. On Wednesday, February 8, 2006, Ms. Wright became very frustrated while working with Kalie McArthur. At approximately 1:00 P.M., Kalie urinated in her pants, which is a sign that she has become upset and/or highly anxious. A staff person at Community Intersections asked Ms. Wright if she wanted to handle it or if she wanted a staff person to handle it. Ms. Wright said she would handle it, and she took Kalie McArthur to the bathroom to change her clothes. (Since the sexual assault, Kalie has a fear of going to the bathroom alone, and someone has to accompany her to the bathroom.)

49. At approximately 1:15 P.M., a staff member at Community Intersections, Sharon Adams, noticed that Kalie McArthur had not yet returned to her desk. Ms. Adams asked Ms. Wright where Kalie was, and Ms. Wright said Kalie McArthur was in the bathroom putting on her socks and shoes. Ms. Adams immediately went to the bathroom and saw that the light was off. Ms. Adams went inside and found her sitting on the floor in the dark and up against the corner. Kalie McArthur was “frozen” trying to put on her socks, trembling and exceedingly stressed, fearful and anxious. Ms. Adams turned on the light, and she helped Kalie put on her socks and shoes and got her out of the bathroom.
50. At that time, **Ms. Wright came by and said: “I’m just not going to play her games!”** Ms. Wright then repeated: “I’m just not going to play her games!”
51. After the bathroom incident, Kalie McArthur displayed great fear in going to the bathroom, and she was exceedingly stressed and anxious. That night, she had tremors so bad that she could not keep food on her fork to eat, and she was shut down emotionally.
52. It was outrageous for Ms. Wright, a D-20 employee hired specifically to provide one-on-one care for Kalie, to punish Kalie McArthur by leaving her alone in the bathroom sitting on the floor and to **turn out the light**. (There is absolutely no way that Kalie McArthur would have turned out the light given that she already had a fear of going to the bathroom alone and was fearful of the dark.)
53. Ms. Wright’s act struck at the core of Kalie McArthur’s problem since the sexual assault – fear, insecurity and anxiety. Ms. Wright disciplined Kalie McArthur in the very way that would tear her up emotionally. Ms. Wright’s repeated statement that “I’m just not

going to play her games!” indicates that Ms. Wright administered this form of discipline with deliberate indifference to Kalie McArthur’s Constitutional rights, emotions and fears. This occurred despite Ms. Wright’s knowledge that Kalie was mentally disabled, had previously been sexually assaulted by a District 20 “field trainer” and was extremely fragile emotionally.

IX. Summary of Kalie McArthur’s Claims

A. 42 U.S.C. § 1983

54. 42 U.S.C. § 1983 authorizes suits to redress deprivations of any rights, privileges, or immunities secured by the Constitution and laws. The Constitution, through the Fourteenth Amendment’s substantive due process component, protects students, like Kalie McArthur, who attend public school from sexual abuse by a “field trainer” selected, assigned and directed by the school. Kalie McArthur has a substantive due process right to bodily security.
55. Ms. Szwarc and others at D-20 (including, but not limited to, Gil Bierman) acted under color of state law and their conduct deprived Kalie McArthur of her federal rights. Ms. Szwarc and others at D-20 abused their power by subjecting Kalie McArthur to harm that would not have occurred in the absence of their conduct.
56. Kalie McArthur was a member of a limited and specifically identifiable group in that she has severe mental disabilities and was a part of the special education class at Rampart High School. As such, she was one of the special education students subject to the school’s “field trainer” program.

57. The conduct of Ms. Szwarc, others at D-20 (including, but not limited to, Gil Bierman) and D-20 itself put Kalie at substantial risk of serious, immediate and proximate harm. Ms. Szwarc and others at D-20 selected the troubled 15-year-old boy to be the “field trainer” for Kalie McArthur. As such, Ms. Szwarc and others at D-20 directed the boy to spend one-on-one time with Kalie McArthur, to supervise her, to socialize with her, to escort her around the grounds of the school and to sometimes be with her without adult supervision. This caused Kalie McArthur to be subjected to the unreasonable risk of serious and immediate sexual abuse. This situation would not have occurred but for the actions of Ms. Szwarc and others at D-20.
58. Ms. Szwarc, Gil Bierman, and D-20 failed to screen the student, a hormone-filled teenage boy, before selecting him to be the school’s “field trainer” for Kalie McArthur. Also, it was known by D-20 (including, but not limited to Ms. Szwarc and Mr. Bierman) that the boy had a history of serious behavior problems before and while he was a “field trainer” for Kalie McArthur. All the while, Ms. Szwarc and others at D-20 (including Gil Bierman) knew that Kalie was fully developed physically, had the mental capacity of a young child, had boundary issues and was extremely vulnerable to sexual abuse. **They then permitted their “field trainer” to be alone with Kalie McArthur. This occurred despite the documented need for Kalie to have constant adult supervision.**
59. The risk of the school’s “field trainer” taking wrongful sexual advantage of Kalie McArthur was known or obvious.

60. Ms. Szwarc and others at D-20 (including Gil Bierman) had more than sufficient knowledge that Kalie McArthur had “boundary issues” and was very trusting, vulnerable to abuse and unable to care for herself.
61. Ms. Szwarc and others at D-20 (including Gil Bierman) knew the teenage boy would have occasions to be alone with Kalie McArthur, that the teenage boy would be able to easily obtain her complete trust, and that the teenage boy could take wrongful advantage of her. Moreover, Ms. Szwarc and others at D-20 (including Gil Bierman) knew that if Kalie McArthur was abused in private, she lacked sufficient mental capacity to tell others about the abuse or to take action on her own to stop the abuse. In other words, any abuse of Kalie McArthur would continue undetected unless some adult happened to witness the abuse.
62. By taking these actions, knowing of Kalie McArthur’s vulnerability and risks of being left alone with the male “field trainer,” Ms. Szwarc, others at D-20 (including Gil Bierman) and D-20 itself acted recklessly in **conscious disregard** of the risk of Ms. McArthur being abused.
63. Such conduct, when viewed in total, **shocks the conscience**. Ms. Szwarc, others at D-20 (including Gil Bierman) and D-20 were **deliberately indifferent** to Kalie McArthur’s constitutional right to bodily security. In addition, these facts also show that Ms. Szwarc, others at D-20 (including Gil Bierman) and D-20 itself increased the risk of harm to Kalie McArthur. As a result, Ms. Szwarc, Gil Bierman, others at D-20 and D-20 itself are liable to Kalie McArthur pursuant to 42 U.S.C. § 1983 and the “danger creation” doctrine.

64. Furthermore, D-20, the Board of Education for D-20 and the principal of Rampart High School (Gil Bierman), failed to adopt appropriate procedures and failed to adequately train and supervise the “field trainer,” Ms. Szwarc and other special education teachers who worked with Kalie McArthur. This failure to implement appropriate procedures and policies, and failure to appropriately supervise and train, caused Kalie McArthur to suffer sexual abuse by the “field trainer” selected by D-20. Such conduct amounted to deliberate indifference to Kalie McArthur’s constitutional rights.
65. One aspect of this culpability is that D-20’s official policies and procedures failed to provide that prospective students for the “field trainer” program be screened and trained beforehand.
66. D-20’s official policy failed to take into consideration the particular vulnerabilities of female special education students (like Kalie McArthur). For example, D-20 failed to provide that she be assigned female “field trainers.” D-20’s official policy also failed to provide that “field trainers” have constant adult supervision – especially in a situation where there is a fully developed female with severe mental disabilities and well-documented “boundary issues.”
67. When taken as a whole, D-20’s official policy of assigning unscreened and untrained “field trainers” to vulnerable, special education students and leaving them without adult supervision displayed a **deliberate indifference** to the rights of persons like Kalie McArthur. D-20’s official policy, as it existed at the time of the incident, was a moving force behind the violation of Kalie McArthur’s Constitutional right to bodily security.

68. The unreasonably dangerous situation of placing Kalie McArthur in the hands of the “field trainer” – a hormone driven, deeply troubled, 15-year-old boy – happened as a direct result of D-20’s official policy and decision making. D-20’s official policy was akin to placing a wolf in charge of a defenseless lamb and leaving the two alone.

B. Violation of Constitutional Rights: Wrongful Actions of Lori Wright

69. The Constitution, through the Fourteenth Amendment’s substantive due process component, protects students, like Kalie McArthur, who attend public school programs from abuse by teachers and para-professionals selected, assigned and directed by D-20. Kalie McArthur has a substantive due process right to personal security and to be free of arbitrary and capricious disciplinary measures.
70. D-20’s employee, Lori Wright, violated Kalie McArthur’s Constitutional rights by leaving her in the bathroom – alone and trembling in the dark – knowing about the sexual assault and Kalie’s resulting level of anxiety, fear and insecurity. Ms. Wright recklessly deprived Kalie McArthur of her Constitutional rights under color of state law.
71. Ms. Wright’s punishment of Kalie McArthur (i.e., leaving her on the floor of the bathroom by herself in the dark knowing her particular and extreme anxiety, fear and insecurity) was a deprivation of Kalie McArthur’s Constitutional right to substantive due process because it was arbitrary, capricious, and wholly unrelated to the legitimate state goal of maintaining an atmosphere conducive to learning.
72. Lori Wright is liable to Kalie McArthur for damages as a result of the violation of her Constitutional rights.

X. Punitive Damages

73. It was outrageous to place the “field trainer” in charge of Kalie McArthur, who was so vulnerable to permanent emotional damage. The sexual assault had tragic consequences, and it basically destroyed Kalie McArthur’s quality of life.
74. It was outrageous for D-20’s employee, Lori Wright, to leave Kalie McArthur sitting in the bathroom – alone and trembling in the dark – as punishment because Mr. Wright was frustrated working with her. This is especially the case given that Ms. Wright knew Kalie McArthur was having serious problems with fear, insecurity and fear, and she was supposed to be working hard to assure Kalie McArthur that she was safe and she could trust her supervisors.
75. Defendants’ conduct involves reckless or callous indifference to the federally protected rights of Kalie McArthur, and she is entitled to recover punitive damages.

XI. Attorney Fees

76. Plaintiff is entitled to recovery of her reasonable attorney fees and costs related to this matter pursuant to 42 U.S.C. § 1988.

XII. Prayer for Relief

WHEREFORE, Plaintiff prays for relief against Defendants as follows:

1. For compensatory damages as determined by a jury;
2. For punitive damages as determined by a jury;
3. For reasonable attorney fees pursuant to 42 U.S.C. § 1988;
4. For expert witness fees and costs; and

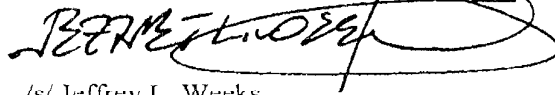
5. For such equitable and further relief as deemed appropriate by the jury and/or court.

XIII. Demand for Trial by Jury

Plaintiff demands that this case be tried by a jury.

Respectfully submitted this 2nd day of June 2006.

WEEKS & LUCHETTA, LLP

A handwritten signature in black ink, appearing to read "JEFFREY L. WEEKS", is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval.

/s/ Jeffrey L. Weeks

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