

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

|                                  |                                |
|----------------------------------|--------------------------------|
| _____ )                          |                                |
| LASHAWN JONES, <i>et al.</i> , ) |                                |
| Plaintiffs, and )                |                                |
| UNITED STATES OF AMERICA, )      |                                |
| Plaintiffs in intervention )     |                                |
| v. )                             | Civil Action No. 2:12-cv-00859 |
| MARLIN GUSMAN, <i>et al.</i> , ) | Section 1, Division 1          |
| Defendants. )                    | Judge Lance M. Africk          |
| _____ )                          | Magistrate Judge Chasez        |
| MARLIN GUSMAN, )                 |                                |
| Third-Party Plaintiff )          |                                |
| v. )                             |                                |
| THE CITY OF NEW ORLEANS, )       |                                |
| Third-Party Defendant. )         |                                |
| _____ )                          |                                |

**PLAINTIFF CLASS' MEMORANDUM OF LAW IN SUPPORT OF MOTION  
FOR CERTIFICATION OF SETTLEMENT CLASS**

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Plaintiffs LaShawn Jones, Kent Anderson, Steven Dominick, Anthony Gioustavia, Jimmie Jenkins, Greg Journee, Richard Lanford, Leonard Lewis, Euell Sylvester and Mark Walker, on behalf of themselves and all others similarly situated (“Plaintiffs”), submit this Memorandum of Law in support of their Motion for Certification of the Settlement Class, in connection with the Consent Decree among Plaintiffs, the United States of America, acting through the United States Department of Justice (“DOJ”) and Orleans Parish Sheriff Marlin Gusman (“Consent Decree” or “Settlement”) and in accordance with the Order of this Court dated January 16, 2013. Rec. Doc. 126.

### **PRELIMINARY STATEMENT**

This case presents the exact facts for which the class action vehicle was created. Plaintiffs ask this Court to remedy the flawed policies, procedures and practices of the Orleans Parish Prison that result in brutal, inhumane and unconstitutional conditions of confinement in that prison. The named plaintiffs seek to represent all those who have been or in the future will be incarcerated at Orleans Parish Prison. This case is ideally suited to proceed and be resolved as a class action under Rule 23. It would be impossible for all members of the proposed class to join in this action. The legal and factual questions on which Plaintiffs’ claims are based are identical to all class members and, most importantly, the remedies proposed in the Consent Decree will resolve the claims set forth in the Complaint. The specific steps enumerated in the Consent Decree demonstrate that Plaintiffs’ claims will and should be resolved through this class action. By granting Plaintiffs’ motion for class certification, the Court will ensure this suit is resolved with speed, consistency and fairness to all parties.

### **ARGUMENT**

Class certification is “especially appropriate” in this action, a prison reform action to remedy the unconstitutional conditions at Orleans Parish Prison that have violated the civil rights

of thousands of men, women and youth incarcerated there. *See Hassine v. Jeffes*, 846 F.2d 169, 180 (3d Cir. 1988); *see also Martin v. Hadix*, 527 U.S. 343 (1999); *Lewis v. Casey*, 518 U.S. 343 (1996); *Castillo v. Cameron County*, 238 F.3d 339 (5th Cir. 2001); *Gates v. Cook*, 234 F.3d 221 (5th Cir. 2000). The class action device was specifically developed to improve the ability of courts to resolve suits involving the criminal justice system. Herbert B. Newberg, 485 NEWBERG ON CLASS ACTIONS § 25.18 (2d ed. 1985).

Even after the Supreme Court heightened the standards for interpreting compliance with Rule 23 of the Federal Rules of Civil Procedure, in *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011), courts have continued to recognize that class certification is a necessary device to address unlawful policies and practices in cases concerning jails and prisons. *See Logory v. Cnty. of Susquehanna*, 277 F.R.D. 135 (M.D. Penn. 2011) (certifying a class of prisoners seeking declaratory and injunctive relief as well as compensatory damages against a county that subjected the plaintiff class to unconstitutional policies, practices and procedures at the local jail); *Bumgarner v. N.C. Dep't of Corr.*, 276 F.R.D. 452 (E.D.N.C. 2011) (certifying a class of prisoners with disabilities who were subject to the Department of Corrections' discriminatory policies and procedures).

The conditions at Orleans Parish Prison are the direct result of policies and practices applicable to all proposed class members – those who are now or will be imprisoned at OPP. This class meets the requirements of Rule 23 and will facilitate implementation of the Settlement designed to improve the conditions at OPP.

#### **I. THE PROPOSED SETTLEMENT CLASS**

Plaintiffs, all incarcerated at Orleans Parish Prison at the time of filing the Complaint, seek to represent a class of persons (the “Settlement Class”) to redress the injuries suffered as a

result of the constitutional violations alleged and defined as “all people who are currently or will be incarcerated at the Orleans Parish Prison.” (Compl. ¶ 21; Settlement ¶ 3.)

## II. REQUIREMENTS FOR CLASS CERTIFICATION

Class certification is appropriate under the Federal Rules of Civil Procedure and relevant precedent where the prerequisites of Rule 23(a) are satisfied and the lawsuit may be maintained pursuant to one of the subsections of Rule 23(b). *See Bolin v. Sears, Roebuck & Co.*, 231 F.3d 970, 975 (5th Cir. 2000). A federal district court is afforded broad discretion in certifying a class, within the confines of Rule 23. *Spence v. Glock, Ges.m.b.H.*, 227 F.3d 308, 310 (5th Cir. 2000). Notwithstanding, “it is well-established that” the court “must conduct a rigorous analysis of the [R]ule 23 prerequisites before certifying a class.” *M.D. v. Perry*, 675 F.3d 832, 837 (5th Cir. 2012) (citations omitted). This rigorous analysis requires the court to, *inter alia*, “look beyond the pleadings to ‘understand the claims, defenses, relevant facts, and applicable substantive law in order to make a meaningful determination of the certification issues.’” *Id.*

Rule 23(a) permits class certification if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. *See Fed. R. Civ. P. 23(a)*. Plaintiffs are entitled to class certification under Rule 23(b)(2) where Defendants have “acted or refused to act on grounds that apply generally to the class” such that injunctive or declaratory relief is appropriate “respecting the class as a whole.” *See Fed. R. Civ. P. 23(b)(2)*.

Where, as here, the proposed class is a settlement class, all of the requirements for Rule 23 remain in effect. *In re OCA Inc. Sec. Deriv. Litig.*, No. 05-cv-2165, 2008 WL 4681369, at \*6 (E.D. La. Oct. 17, 2008) (citing *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591 (1997)).

Although consideration of the “likely difficulties in managing a class action” as required by Rule 23(b)(3)(D) is excused, “the court’s consideration of the other factors in Rule 23 is of ‘vital importance’ since the court will lack a later opportunity to make adjustments to the class.” *In re OCA*, 2008 WL 4681369 at \*6 (quoting *Amchem*, 521 U.S. at 620). Therefore, “[t]he existence of a settlement class may even ‘warrant more, not less, caution on the question of certification.’” *Id.* As discussed below, the proposed Settlement Class more than meets the requirements of Rule 23.

### **III. THE PROPOSED SETTLEMENT CLASS SATISFIES RULE 23(A)**

#### **A. The Numerosity Requirement of Rule 23(a)(1) is Satisfied**

Rule 23(a)(1)’s numerosity requirement is met here because (i) the Settlement Class numbers in the thousands and (ii) includes future inmates who cannot now be enumerated or joined. These considerations render individual joinder impracticable. *See Mullen v. Treasure Chest Casino, LLC*, No. 96-cv-0052, 1997 WL 539917, at \*2 (E.D. La. Aug. 29, 1997) (stating that “a sufficiently large number of potential claimants alone may indicate that the numerosity requirement is met”), *aff’d* 186 F.3d 620 (5th Cir. 1999).

The Settlement Class is comprised of 2,300 individuals presently incarcerated at OPP, plus the innumerable number of persons who will be detained at OPP at some time in the future. Because OPP is a jail rather than a long term prison facility, many people cycle through. Over 35,000 people are booked through OPP intake annually. Many of these people may spend only days or weeks there, but all are subjected to the policies, procedures and practices challenged in the Complaint, and addressed in the proposed Consent Decree. The number of presently incarcerated class members alone would be more than enough to meet the numerosity requirements in the Fifth Circuit. *Compare Jack v. Am. Linen Supply Co.*, 498 F.2d 122, 124 (5th Cir. 1974) (class of 51 members); *see also Jones v. Diamond*, 519 F.2d 1090, 1100 & n. 18



(5th Cir. 1975) (class of 48 members) (*disapproved in part on other grounds, Gardner v. Westinghouse Broad. Co.*, 437 U.S. 478 (1978)).

The inclusion of future residents renders it literally impossible to join all members of the class, and in such circumstances courts routinely conclude that numerosity is demonstrated. *See, e.g., Jack*, 498 F.2d at 124 (“joinder of unknown individuals is certainly impracticable”); *accord Pederson v. La. St. Univ.*, 213 F.3d 858, 868 n.11 (5th Cir. 2000) (inclusion of future class members relevant to whether joinder is impracticable). This is particularly true in cases involving prisons and jails. *See Andre H. v. Ambach*, 104 F.R.D. 606, 611 (S.D.N.Y. 1985) (A prison population “is constantly revolving,” which “establishes sufficient numerosity to make joinder of the class members impracticable.”); *Dean v. Coughlin*, 107 F.R.D. 331, 332-33 (C.D.N.Y. 1985) (“The fluid composition of a prison population is particularly well suited for class status, because, although the identity of the individuals involved may change, the nature of the wrong and the basic parameters of the group affected remains constant.”); *Skinner v. Uphoff*, 209 F.R.D. 484, 488 (D. Wyo. 2002) (“As members *in futuro*,” potential future inmates “are necessarily unidentifiable, and therefore joinder is clearly impracticable.”). For facilities such as OPP, where the majority of persons incarcerated are pretrial detainees, a finding of numerosity is all the more appropriate. *See Hiatt v. Cnty. of Adams*, 155 F.R.D. 605, 608-09 (S.D. Ohio 1994) (“short term nature of [plaintiffs’] incarceration” eliminated standing upon release such that prisoners’ claims were “distinctly capable of repetition, yet [ ] evading judicial review,” and thus finding that “class action is *the only* vehicle whereby the legality of the operation of the [jail] can be reviewed”) (citations omitted, emphasis added).

Absent relief through the proposed Consent Decree, both current and future inmates at OPP will continue to be at risk due to inadequate system-wide policies and practices that create

unconstitutional conditions for all those who are now or may be incarcerated in those facilities. The proposed class is thus an identifiable group with a cognizable risk of future injury. Other factors that courts often consider in connection with the impracticality of individual joinder also weigh in favor of certification here. *See Zeidman v. J. Ray McDermott & Co.*, 651 F.2d 1030, 1038 (5th Cir. 1981) (describing factors other than number of plaintiffs that may be relevant to a numerosity determination). For example, many present and future class members would be unlikely to bring their own suits because of limited access to legal representation and fear of reprisal. *See, e.g., Cortigiano v. Oceanview Manor Home for Adults*, 227 F.R.D. 194, 204-05 (E.D.N.Y. 2005) (citing class members' fear of reprisals, mental disabilities, and lack of resources to prosecute their own claims in certifying class in group residence case). Additionally, judicial economy would be achieved from the avoidance of multiple concurrent actions, including actions brought *pro se* by incarcerated persons. *See, e.g., In re Rodriguez*, 432 B.R. 671, 692 (Bankr. S.D. Tex. 2010) (judicial economy is a consideration for numerosity) (citing *Zeidman*, 651 F.2d at 1038).

**B. The Commonality Requirement of Rule 23(a)(2) is Satisfied**

Plaintiffs also easily demonstrate commonality under Rule 23(a). Where, as here, Plaintiffs “share a common goal” of “challenging [] unlawful policies and procedures,” the commonality requirement of Rule 23(a) is readily met. *McWaters v. FEMA*, 237 F.R.D. 155, 157-58 (E.D. La. 2006). Moreover, where all members of a class “are subject to the same policies, practices, and conditions of confinement” as are Plaintiffs here, and the same violations of law “constitute the factual core of each member’s claim,” commonality exists. *J.D. v. Nagin*, 255 F.R.D. 406, 414-15 (E.D. La. 2009). Civil rights cases in particular easily demonstrate commonality because the defendants’ actions are “central to the claims of all class members irrespective of their individual circumstances and the disparate effects of their conduct.” *Baby*

*Neal ex rel. Kanter v. Casey*, 43 F.3d 48, 57 (3d Cir. 1994) (for this reason “classes have been certified in a legion of civil rights cases”); *see also Inmates of Attica Corr. Facility v. Rockefeller*, 453 F.2d 12, 24 (2d Cir. 1971) (“inmates have a common interest in preventing the recurrence of the objectionable conduct” because prisons are designed to standardize prisoners’ experiences).

Post *Wal-mart*, Rule 23(a)(2) requires that classwide proceedings have the ability “to generate common answers apt to drive the resolution of the litigation.” *M.D.*, 675 F.3d at 840 (quoting *Wal-Mart Stores, Inc.*, 131 S.Ct. at 2551). Commonality will be met where the class members’ claims depend on a common issue of law or fact whose resolution “will resolve an issue that is central to the validity of each one of the claims in one stroke. *Id.* The purpose of this requirement is to ensure that the class members’ claims “can productively be litigated at once.” *Id.*

Here, Plaintiffs are all at risk of violence and mental deterioration because of Defendant’s unconstitutional policies and practices, which necessarily impact all persons confined at OPP: a textbook case of commonality. The Complaint and declarations submitted in support detail the common conditions to which all people in OPP are subjected, and the structural deficiencies at OPP that place all of the class members at imminent risk of serious harm and even death. These common conditions and unconstitutional policies and practices are further documented by evidence submitted by Plaintiffs throughout the pendency of this action. *See, e.g.*, Proposed Findings of Fact and Conclusions of Law, to be filed forthwith. This case does not involve individual claims of harm amalgamated into an amorphous whole. Rather, this case involves specific allegations of Defendant’s systemic failure to adequately protect and treat the class members while imprisoned at OPP, and the Complaint and proposed Consent Decree target

concrete policies and practices that carry a substantial risk of harm to all people who are or will be housed in OPP.

Over the course of this litigation, Plaintiffs have filed 101 declarations with this Court, on behalf of people incarcerated in OPP. These declarations, together with the evidence filed in support of the Proposed Findings of Fact and Conclusions of Law, support a finding of commonality in this case. Although the declarations have been filed by many individuals, they raise common complaints about systems in OPP that are deficient, and that underlie the harm that has befallen them.

| Specific Systemic Common Contentions by Plaintiff Class in Complaint  | Supporting Declarations Demonstrating That Deficiencies are Class-Wide and Systemic, Rather Than Individualized Instances of Harm   |
|---|---|
| Security  |   |
| <p><b>Widespread deputy use of excessive force creates an excessive risk of harm to class members:</b><br/>                     Violence occurs at the hands of deputies. Rec. Doc. 1 ¶ 2. Officers knowingly instigate fights and attacks, or persuade prisoners to attack other prisoners. Rec. Doc. 1 ¶ 141.</p> | <ul style="list-style-type: none"> <li>• “A couple of weeks before I went to Jackson (mental hospital), I was beaten so badly by deputies in Old Parish Prison that I had to go to the hospital.... They took me off the tier and stomped, punched and kicked me. They also hit me across the face a couple of times with a radio. I think it lasted 10 to 15 minutes. ... When they finally took me to the hospital doctors told me that my jaw was fractured and I needed surgery.” King decl. ¶ 3-4, 6, Exhibit 1.</li> <li>• “When Devonte began to curse, Sgt. Washington slapped him hard across the face. Devonte began staggering, and Sgt. Washington began to choke him. At that point, the deputies dragged Devonte off of the tier. Devonte returned 30 to 45 minutes later, with his face bruised and bloodied. He informed us that the deputies had knocked him to the ground and began stomping and kicking him.” Reed decl. ¶¶ 3, 4, Exhibit 1.</li> <li>• “There also was a small guy in the hole who was asking to get help and kept saying he was suicidal. Deputies were ignoring him too, until his cell opened and he refused to go back in his cell. They started fighting. SOD officers and some other officers came and started beating him as they dragged him off the tier. I left the hole later that day and as I was leaving I saw the small guy in a holding tank with a swollen face and a black eye.” Rothschild decl. ¶ 6, Exhibit 1.</li> <li>• “Before I was moved out of HOD, some ranking officers</li> </ul> |

| Specific Systemic Common Contentions by Plaintiff Class in Complaint | Supporting Declarations Demonstrating That Deficiencies are Class-Wide and Systemic, Rather Than Individualized Instances of Harm  |
|--|--|
|  | <p>beat a guy up on my tier. They even used a wooden stick at one point. They beat him up really badly and then didn't give him any medical treatment." Rec. Doc. 14-4, Anderson decl. ¶ 4.</p> <ul style="list-style-type: none"> <li>• "Once on the elevator, I was picked up by the shackles and slammed on my face by one of the guards on the elevator. This caused my right eye to be gashed very badly and I immediately started bleeding. When I got back to my feet there were guards on the elevator with shotguns pointed at me and the other inmate. They told us to turn around and face the wall and then they began to beat us. I was punched, kicked, and stomped in the face multiple times by multiple guards." Hampton decl. ¶¶ 5-6, Rec. Doc. 14-4. <i>See also</i>, Platt decl., Rec. Doc. 14-4.</li> <li>• "On April 29, 2012 deputies came in and told us all to get in the shower for roll call. One of the guys in my Tent started yelling at a deputy for stuffing us in the shower. The showers aren't big enough for 100 people. The deputy got a ranking officer and then the ranking officer called SOD. Some guy from SOD ran in full force, cocked a gun, and fired a bean bag bullet. Then he threatened to shoot anyone who didn't get in the shower. One guy got grazed by a bullet and had to be taken to medical. I saw burns on his face." Lowery decl. ¶ 7-8, Rec. Doc. 14-4. <i>See also</i>, McCorvey decl., Rec. Doc. 14-4.</li> <li>• "SOD will also beat inmates up. There was a guy who bonded out a while ago whose face was all swollen from SOD beating him up. Guards beat people all the time. If anyone gets hurt, they hurry up and get them out. Or they take away your visits and put you in the hole so your family can't see what happened." Pierce decl. ¶ 4, Rec. Doc. 14-4.</li> <li>• "Sometimes guards facilitate these fights by bribing or rewarding prisoners with cigarettes for beating up specific prisoners." Rhodes decl. ¶ 3, Rec. Doc. 14-4.</li> <li>• "A few weeks ago, I was choked by a ranking officer until I was disoriented because I refused to take off my jumper while I was on suicide watch." Morris decl. ¶ 2, Rec. Doc. 81-1.</li> <li>• "I was in the holding tank in the Intake and Processing Center and had not received water for over 24 hours. To protest this treatment and alert guards, I began banging on the door. Deputies came in to apprehend me and began</li> </ul> |

| Specific Systemic Common Contentions by Plaintiff Class in Complaint   | Supporting Declarations Demonstrating That Deficiencies are Class-Wide and Systemic, Rather Than Individualized Instances of Harm   |
|--|---|
|  | <p>punching me and pulling my hair. They dragged me to the ground. After being pummeled to the ground, I was dragged out of the holding tank by my arms. I was then slammed against the gate and the wall.” Brewer decl. ¶ 1-5, Rec. Doc. 81-1.</p> <ul style="list-style-type: none"> <li>• “On November 15, 2012 people were getting haircuts on the yard. A few guys refused to get haircuts so several SOD officers responded and started beating these guys up really badly. I could see that some of them had hickies on their faces from the beating.” Doe decl. ¶ 2, Exhibit 1.</li> <li>• “Some deputies and ranking officers set prisoners up to get jumped. They put them on tiers where they know they will get hurt, or they bribe guys on the tier to attack someone else.” Miorana decl. ¶ 4, Exhibit 1.</li> </ul>  |
| <p><b>Widespread prisoner on prisoner violence constitutes a failure to protect that creates a substantial risk of harm to class members:</b><br/>Violence occurs at the hands of other prisoners. Rec. Doc. 1 ¶ 2.</p>  | <ul style="list-style-type: none"> <li>• “The prisoners on A-1 butcher each other. Everyone on the tier has knives. ... I have seen instances of prisoners being jumped as soon as they enter the tier. People could die there before they even receive a bed space.” Alford decl. ¶¶ 2, 5, Exhibit 1.</li> <li>• “My retina detached after someone attacked me in Old Parish Prison.... I will most likely never be able to see out of this eye again thanks to OPP. The deputies didn’t protect me on the tier and they didn’t take me to surgery in time to save my eye. This place has permanently scarred me.” Pleasant decl. ¶¶ 2, 6, Exhibit 1.</li> <li>• “I arrived to Orleans Parish Prison... from having my competency restored at Jackson Mental Hospital.... During my first week at Orleans Parish Prison after having my competency restored I was physically assaulted by multiple men in my cell, had all of my personal belongings taken, was sexually harassed, had my life threatened, and witnessed another cellmate get stabbed.” Simonson decl. ¶ 3, Rec. Doc. 14-4.</li> </ul> |
| <p><b>Presence of knives constitutes a failure to protect that creates a substantial risk of harm to class members:</b><br/>The facility is full of knives. Rec. Doc. 1 ¶ 2. The men and women housed at OPP are at constant risk of harm due to the presence of weapons and contraband. Id.; ¶¶ 138, 142.</p> | <ul style="list-style-type: none"> <li>• “I have been threatened with knives, jumped and stabbed. I also have witnessed many stabbings since I have been in OPP.” Dominick decl. ¶ 2, Rec. Doc. 2-2.</li> <li>• “Another time there were two guys with knives fighting on the open tier.” Gioustavia decl. ¶ 3, Rec. Doc. 2-2.</li> <li>• “There are shanks everywhere and everyone’s cell pops open. It doesn’t matter which facility you are in, you are going to leave with some scars.” Dominick decl. ¶ 5-6, Rec. Doc. 2-2.</li> <li>• “Some of them held me while one of them stabbed me over</li> </ul>  |

| Specific Systemic Common Contentions by Plaintiff Class in Complaint | Supporting Declarations Demonstrating That Deficiencies are Class-Wide and Systemic, Rather Than Individualized Instances of Harm  |
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|  | <p>and over.” Journee decl. ¶ 3, Rec. Doc. 2-2.</p> <ul style="list-style-type: none"> <li>• “There are knives everywhere.” Sylvester decl. ¶ 9, Rec. Doc. 2-2.</li> <li>• “People on my tier have shanks so big, they look like kitchen knives.” Journee decl. ¶ 4, Rec. Doc. 2-2.</li> <li>• “I’m afraid for my life in here. They’re really stabbing people up.” Robinson decl. ¶ 2, Rec. Doc. 2-3.</li> <li>• “Altogether they stabbed me once in the neck, multiple times in the head and back. My hand was also sliced when I tried to grab the knife.” Tapp decl. ¶ 3, Rec. Doc. 2-3.</li> <li>• “This is serious. You can die in here. You can easily be killed any day. There are at least two to ten knives on every tier. If you report something, though, you’ll probably get stabbed up. Animals can’t live back here, much less human beings.” Miorana decl. 6, Rec. Doc. 2-3.</li> <li>• “The guy that got stabbed had to run to the window and start banging on it to get someone’s attention. He was yelling ‘I got stabbed! I got stabbed!’ For all of these fights, the guards weren’t around. Because I’m on the medical tier, though, it is the safest tier to be on. I can’t imagine what goes down on the regular tiers.” Sabine decl. ¶ 4-5, Rec. Doc. 2-3.</li> <li>• “In December 2012 a prisoner chased another prisoner around the tier with a knife.” Benjamin decl. ¶ 3, Exhibit 1.</li> <li>• “Around December 9, 2012, I was on Conchetta 2-1 when I got in a verbal argument with another guy on the tier. He had two long knives made from the metal in Timberland boots. I didn’t know he had knives though. After exchanging words he attacked me with one of the knives. He stabbed me in the neck and then ran over to my friend who was asleep on his rack and stabbed him in his face and ear.” Butler decl. ¶ 2, Exhibit 1.</li> <li>• “While I was housed in Conchetta almost all of the people in my dorm had knives made out of material found around the dorm. People felt they had to make and carry knives to protect themselves. Throughout October, other men on the dorm threatened me with knives on several occasions. On October 31, I was threatened by six younger men with knives.” Ellis decl. ¶ 3, Exhibit 1.</li> <li>• “Guys in OPP made shanks from parts of their shoes and other stuff they found on the tier. I saw a man nearly get killed over there because other guys were stabbing him over and over.” Tabb decl. ¶ 7, Rec. Doc. 14-4.</li> </ul> |

| Specific Systemic Common Contentions by Plaintiff Class in Complaint  | Supporting Declarations Demonstrating That Deficiencies are Class-Wide and Systemic, Rather Than Individualized Instances of Harm  |
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|   | <ul style="list-style-type: none"> <li>• “I have seen many knives around the prison. I have seen men take knives with them out of the kitchen and I have seen men make little ice pick knives by taking apart fans. I have also seen men make knives from steel-toed boots they come in wearing, by ripping apart the shoe, pulling out the metal, and filing it down into a knife.” Washington decl. ¶ 10, Rec. Doc. 14-4.</li> <li>• “A few weeks ago, I got stabbed by a guy multiple times on the A-4 tier. When the guy went to stab me, I put my hands up to protect myself. As a result, I got stabbed in the hands with a rusty knife.” Scarborough decl. ¶ 3, Rec. Doc. 81-1.</li> <li>• “He ended up stabbing me several times in my head and back and once right above my left eye. Finally some other guys on the tier pulled him off of me. I was bleeding all over. I took a shower before a deputy came on the tier, but when he arrived for roll call I was still bleeding badly. He noticed the blood and pulled me off the tier. ... Doctors at the hospital gave me stiches in my face and back.” Bates decl. ¶ 3-5, Rec. Doc. 56-2.</li> <li>• “Then I saw another man, one of the tier reps, walk up to the man who was getting beat up. The tier rep started stabbing the new guy with a shank. He got stabbed a few times, at least. He was screaming and yelling for help. He was bleeding a lot. Blood kept spurting all over the floor and the walls of the tier. A deputy heard all the screaming and took the injured prisoner off the tier. The deputy told us later that the man had a punctured lung and was in the hospital.” Hearn decl. ¶ 6-8, Rec. Doc. 56-2. <i>See also</i>, Jones decl., Rec. Doc. 56-2 (“I didn’t realize I had been stabbed right away even though I was bleeding really badly. I’m not sure why they jumped me, but I think it was for my shoes since they took them from me during the fight.”)</li> </ul> |
| <p><b>Inadequate security staffing policies constitute deliberate indifference and create a substantial risk of harm to class members:</b><br/>                     OPP lacks adequate security staffing. Rec. Doc. 1 ¶¶ 2, 8, 39. In much of the prison, only one officer is assigned to</p> | <ul style="list-style-type: none"> <li>• “These facilities are not undermanned, they are unmanned. Deputies frequently leave their posts. Guards typically work two floors during one shift, especially in Old Parish Prison.” Dominick decl. ¶ 6, Rec. Doc. 2-2.</li> <li>• “The guards keep these facilities unsafe. Guards patrol two floors at once, so my tiers have gone without supervision for long periods of time. When guards are present, they ignore us and sleep.” Lanford decl. ¶ 9, Rec. Doc. 2-3.</li> <li>• “Guards are never around when a fight breaks out, which is</li> </ul>  |



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| <p>supervise a floor, and in the tents, there is one deputy per 88 prisoners. Prisoners are left unsupervised when the assigned officer leaves the area for any reason, such as to use the bathroom, eat, smoke, etc. Additionally, OPP policy prohibits a lone deputy from entering a tier without backup. In the event of an emergency (a seizure, heart attack, or physical altercation/ stabbing) prisoners have to scream for guards and beat on doors and windows to get attention. Even if prisoners get a deputy's attention, the deputy cannot enter the tier until backup arrives, which takes time. Prisoners have to administer first aid to one another and sometimes resort to using the phones to contact family members to call 911. Rec. Doc. 1 ¶ 135.</p> | <p>often. They usually come by for count time and then leave again for hours. I don't feel like they are doing much to protect any of us." Gioustavia decl. ¶ 4, Rec. Doc. 2-2.</p> <ul style="list-style-type: none"> <li>• "An older, bigger guy attacked me when I first rolled in. Guards were not around when it happened. It lasted a long time." Gioustavia decl. ¶ 2, Rec. Doc. 2-2.</li> <li>• "We're on our own in here." Lewis decl. ¶ 16, Rec. Doc. 2-2.</li> <li>• "Guards do nothing to prevent the violence. In fact, they often instigate it. When a severe injury results from a fight, guards fail to respond with urgency. It can take hours for a deputy to come to a tier. Consequently, I have had to apply pressure to knife wounds and called family members to contact 911 since guards refuse to help." Dominick decl. ¶ 3, Rec. Doc. 2-2.</li> <li>• "Guards do not patrol the tiers, they do not respond to verbal complaints or grievances." Walker decl. ¶ 12, Rec. Doc. 2-2.</li> <li>• "I was bleeding all over and yelled for a deputy. No one came until the next day. When the guard did come, he did not do anything." Journee decl. ¶ 3, Rec. Doc. 2-2.</li> <li>• "All the cells pop open and the guards only come through a few times a shift." Robinson decl. ¶ 5, Rec. Doc. 2-3.</li> <li>• "I thought it would be better on HOD 10, but guards leave us unattended just like they do at Old Parish Prison." Jenkins decl. ¶ 5, Rec. Doc. 2-2.</li> <li>• "It took awhile for the guards to respond. Then the nurses came. It took even longer for an ambulance to get there. I was just lying in my own blood." Tapp decl. ¶ 4, Rec. Doc. 2-2.</li> <li>• "Guys have almost died on the tier because the guards are never around. Sometimes it takes 30 to 45 minutes of banging on the door before the guards will respond." Miorana decl. ¶ 5, Rec. Doc. 2-3.</li> <li>• (After a severe beating) "for the next couple of weeks, they put a deputy on the tier to stop anyone from fighting, but eventually that stopped. There is no deputy on the tier anymore. We're on our own again." A.J. decl. ¶ 7, Exhibit 1.</li> <li>• "Around Christmas, someone on my (medical) tier had a seizure. There was not a deputy in the booth, so three other guys and I had to kick and bang on the door to get someone's attention for help. I think it was maybe 15 or 20</li> </ul> |

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|  | <p>minutes before a deputy arrived. The deputies took so long to arrive that we had to take turns banging on the door because we were getting tired. I am really worried that one day someone is going to die on this tier because it takes deputies so long to respond to an emergency. I am not saying that lightly. I really believe someone is going to die if things do not change.” Everett decl. ¶¶ 2-3, Exhibit 1.</p> <ul style="list-style-type: none"> <li>• “While in Old Parish Prison I was attacked by several prisoners while I was sleeping. The prisoners kicked and hit me repeatedly while I was on the floor. One of the prisoners stabbed me in the forehead. There were no guards around to stop the prisoners from jumping me. I kicked on the door for several minutes but couldn’t get the guard’s attention. I had no other option but to call my wife and have her call the jail in order to have me removed from the tier. A deputy arrived a couple of hours later to take me off the tier. I was transported to University Hospital where doctors gave me stiches in my forehead.” Faggin decl. ¶¶ 3-4, Exhibit 1.</li> <li>• “Since my confinement, I have witnessed multiple violent incidents in the jail. A lot of the incidents occur when the deputies are absent from the tier. The deputy working the tier is usually absent for 2-3 hours at a time. The deputies are hardly ever on the tier. Their absence makes the jail very dangerous.” Hyatt decl. ¶ 2, 7, Exhibit 1.</li> <li>• “Around January 13, 2013 a recent ‘roll in’ was attacked by someone else on the tier. There weren’t any guards around and the new guy had to beat on the door for a long time before a deputy responded. There are frequent fights on my tier, in part because the deputies are rarely around. Sometimes after roll call at 6 p.m., you won’t see deputies again until two or three in the morning. Even if you have major health concerns, you can’t rely on the deputies to save you.” Tate decl. ¶¶ 2-3, Exhibit 1.</li> <li>• “This amount of violence can happen because the guards are never around. ... the guards wouldn’t patrol our floor from 7 pm to 7 am. Anything could happen at night.” Washington decl. ¶ 7, Rec. Doc. 14-4.</li> <li>• “After I was stabbed, some of the guys on the tier jumped on me. There was no deputy around, because he had gone to take another prisoner to sick call. I was beaten for a long time. When the deputy finally came back to the tier I ran off. My face is still numb from the attack, and I cannot bite</li> </ul> |

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|  | <p>down with my jaw. I am seeing double out of my left eye. Last week when the DOC came to inspect the jail, the deputies were monitoring the tiers, they did a shakedown for weapons, and staggered transport of people. If they did this stuff all the time, we wouldn't have problems." Scarborough decl. ¶¶ 4-9, Rec. Doc. 81-1.</p> <ul style="list-style-type: none"> <li>• "My head was split open and both my eyes were swollen shut by the time they were finished. If it hadn't been for one of the attackers telling the others to finally stop, they would have killed me for sure. I was stuck in a cell with them for a long time afterwards. I was lying in my own blood, yelling for deputies and nurses. But no one came... Finally deputies came... Doctors at the hospital gave me stiches under my eye and staples in my head. I had to stay in the hospital for a couple of days so they could monitor me." King decl. ¶¶5-6, Rec. Doc. 56-2.</li> <li>• "The beating lasted approximately five minutes before deputies came to break it up. I suffered a broken jaw, a broken eye socket and had to have a metal plate put in my face where my eye socket was broken. My nose was too swollen for doctors to tell if it was broken or not. I have to return to the hospital at a later date for another x-ray. My jaw is wired shut, I have stiches above and beneath my left eye and I have a broken blood vessel in my left eye." Lewis decl. ¶¶ 3-5, Rec. Doc. 56-2.</li> <li>• "The incident lasted roughly 40 minutes as the 5 prisoners took turns beating me in various groupings. The prisoners broke my jaw and bloodied my face. ... I stayed up all night on the tier and did not scream for fear of being attacked again but also because I knew the guards would not hear me until the morning when they return to their posts. The guards returned to the tier around 6 a.m. I was taken to medical, then to the hospital. I had a plate installed on my jaw and my mouth was wired shut. I was in the hospital for three days." Smith decl. ¶¶ 2-3, Rec. Doc. 56-2.</li> <li>• "The guards are barely ever around. One guy on my tier recently had back to back seizures. We were kicking on the door, trying to get someone to help. It took about an hour before anyone from the jail responded. We can really get hurt or sick on this tier because the guards are slow to respond. I don't know what we are supposed to do to get help." Scarborough decl. ¶ 4, Exhibit 1.</li> </ul> |

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| <p><b>Inadequate classification policies constitute deliberate indifference and create a substantial risk of harm to class members:</b><br/>                     Defendant’s classification policies and practices are dangerously deficient. Rec. Doc. 1 ¶¶ 2, 3. The classification system fails to screen for prisoners with enemies, as well as fails to sort prisoners into dorms according to propensity for violence or risk of harm. Rec. Doc. 1 ¶¶ 39, 143- 145.</p> | <ul style="list-style-type: none"> <li>• “I also think this amount of violence can happen in the Old Parish facility, because once you get your time from the judge, you go to the Old Parish facility where they mix everyone together, regardless of the color of their arm bands. For example, my criminal offense was non-violent, and I was given an orange band. I know that red bands are for men with violent offenses. Yet once I was sentenced by the judge I was housed in the Old Parish facility in cells and open area dorms that mix men with orange and red bands together. There are other classification problems. Prison officials do not screen us for gang membership, sexual orientation, or religious affiliation—rather, they throw us all together in the gumbo soup of Orleans Parish Prison. This breeds violence and discrimination amongst the prison population.” Washington decl. ¶ 8-9, Rec. Doc. 14-4.</li> <li>• “After I spent a day or so in the Intake and Processing Center, guards put me in a holding tank in Old Parish Prison. Then they put me on a regular tier in OPP even though I have a low charge and a low bond. Guys told me to get off the tier because I did not have high enough charges. (Doe was subsequently raped.) Doe decl. ¶ 3-4, Rec. Doc. 81-1.</li> <li>• “I was put in the hole in Old Parish Prison for ‘detox.’ I should never have been put in Old Parish Prison. There is no classification in this jail and deputies are never around. I was almost killed in there. This place isn’t right. They promised to protect me, but wherever I go it doesn’t matter. I am never safe.” King decl. ¶ 3, 13, Rec. Doc. 56-2.</li> <li>• “When I got out of Templeman they put me in the maximum security tier in HOD with adults. [J.J. is a juvenile.] All the cells popped open and one of the adults hit one of the kids who came over with me. Guards were not on the tiers to protect us. I have never been so scared in my life.” J.J. decl. ¶ 12, Rec. Doc. 2-3.</li> <li>• “A deputy put me in a cell with a guy that knew the prisoner I am testifying against. He stabbed me a bunch of times. The guard knew he was my enemy, but he didn’t care. I think he wanted to see one of us get hurt.” Lewis decl. ¶ 3, Rec. Doc. 2-2.</li> <li>• “I was placed in the Old Parish facility because my bail was really high. Old Parish is where they keep the most violent offenders—yet my offense was not violent. Since</li> </ul> |

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|  | <p>my arrest I have been jumped at least three times, and other inmates have attempted to sexually assault me and threatened to kill me numerous times.” Lanford decl. ¶ 2-3, Rec. Doc. 2-3.</p> <ul style="list-style-type: none"> <li>• “After I was on protective custody they took me to court with general population. I ended up getting stabbed and jumped by a bunch of guys when I was on the docks waiting for court.” Lewis decl. ¶ 8, Rec. Doc. 2-2.</li> <li>• “Prior to my arrest I pressed charges on someone. When I was arrested, the jail did not check for this conflict. They put me in the same building as my defendant, who put a hit on me.” Sylvester decl. ¶ 2, Rec. Doc. 2-2.</li> <li>• “Although deputies on the tier were told by rank not to place anyone in the cell with me, the next day I had a new cellmate. I got into a physical altercation with my new cellmate after he attempted to steal my medications that I was given for my injuries.” Bourgeois decl. ¶ 7, Exhibit 1.</li> <li>• “I have been subject to physical and sexual assaults from other prisoners while housed at HOD. I have also been subject to humiliating verbal abuse from the guards. All incidents have been in direct response to the fact that I am gay.” Richard decl. ¶ 2, Rec. Doc. 14-4.</li> <li>• “A few weeks ago a man who I think has serious mental health issues was put in our tent. He walks around naked and talks to himself all the time. We were worried about him being in our tent since it’s obvious he needs to be on the psych tier. Lots of us reported to guards that they needed to move him, but they ignored us.” (Man was severely beaten by prisoners for walking around naked.) “The man was in the hospital for several days. Then, they put him back in the very same tent where he was almost killed. I complained to a ranking officer about him being back in Tent two but she acted like she didn’t know anything about it. I’m really worried about classification in here. They are putting guys with felonies and misdemeanors together in my tent. And this guy who was hurt isn’t getting the mental health help he needs. Guys are really on the edge of stabbing him and jumping him. I’m concerned that it’s just a matter of time before he gets hurt again.” Picard decl. ¶¶ 1, 5, 6, Rec. Doc. 56-2.</li> <li>• (Known attacker not kept away from victim): “I was in the hospital for three days. I reported that the five men attacked me to Officer Simms and SOD.” (A couple of months later)</li> </ul> |

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|   | <p>“while waiting at the loading docks to be transported to court, I was attacked again by Tiger. He called my name so I looked up. Boom. He hit me in the face. ... I had a black eye and a 2-3 inch cut on my face. I was taken to the hospital and received 7 stiches. I did not report the incident to SOD because SOD did nothing when Tiger and his friends broke my jaw.” Smith decl. ¶ 4, Rec. Doc. 56-2.</p> <ul style="list-style-type: none"> <li>• “The guys who attacked me are still in the same building as me. When they were on the yard, one of them came up to a window on my tier and yelled threats at me. I don’t feel safe in this building because my attackers are still here, the guards don’t do their jobs, and there is no classification.” Steel decl. ¶ 8, Rec. Doc. 56-2.</li> <li>• “The guys stopped beating me when they heard deputies coming. The deputies took me off the tier and a little while later I talked to SOD officers. ... I had to stay in a holding tank overnight because they didn’t have anywhere safe to put me. While I was in the holding tank, people stole my stuff on the tier. This wasn’t the first time I got hurt in the jail. I was jumped in Conchetta several months ago, so I had to leave the building. When I came back to Conchetta this month, I told deputies I couldn’t be in Conchetta and that I had gotten hurt there before. But they didn’t listen. Because I am gay, I am constantly being hurt or harassed in here and no one is protecting me.” Temple decl. ¶¶ 4-6, Rec. Doc. 56-2.</li> </ul> |
| <p><b>Inadequate security policies constitute deliberate indifference and create a substantial risk of harm to class members:</b><br/>                     Defendant’s security policies and practices are dangerously deficient. Rec. Doc. 1 ¶¶ 2, 3. Cell doors are not monitored to ensure that they are secure. Rec. Doc. 1 ¶ 139. Deputies do not remove blankets hanging from beds and windows, which allow attacks to occur unnoticed.</p> | <ul style="list-style-type: none"> <li>• (Tier reps control tier): “The gangs are usually in charge of allocating the food. Some prisoners feel like they do not get enough food, so they get mad. If the prisoners complain about not getting enough food, the gangs jump on them. A lot of prisoners do not say anything because they do not want to get beat up.” Alexcee decl. ¶ 6, Exhibit 1.</li> <li>• (Tier rep/ failure to secure tools): “I realized the tier rep was following me back to my bunk and that he was carrying a serving spoon. ... He hit me in the back of the head with the serving spoon, splitting my head open. ... Once transported to University Hospital I was told by the doctor that I suffered a fractured skull and that I would need sutures on the inside of my head and stiches on the outside to close the gash in my head.” Washington decl. ¶¶ 2-6, Rec. Doc. 56-2.</li> <li>• (Tier reps are themselves targets for violence, because they control food): “I went back to Conchetta 2-1 after the hole</li> </ul>  |

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|  | <p>and was the tier representative there, which means I distribute food. On February 5 a big guy told me he wanted to be tier rep. He started beating me so that he could be tier rep.” Rothschild decl. ¶ 7, Exhibit 1.</p> <ul style="list-style-type: none"> <li>• (Tier reps are targets of violence): “In the middle of May, while I was ‘tier rep’ on OPP B-1, I was serving food for the last meal of the day. Everybody was standing around to get their food and a deputy was also right there. I announced that we were almost out of fruit and this guy asked me for more fruit. I said no because others were still waiting for their first serving and I had already given him fruit. When I refused to give him more, he punched me in the face. We went to fighting even though the guy is much bigger than me. I don’t know how long the fight lasted. The deputy just waited for us to stop. At the hospital, the doctor told me that my left eye was bleeding and my left retina had detached. The doctor said I would need surgery to fix it and get my eyesight back.” Pleasant decl. ¶¶ 2-5, Rec. Doc. 56-2.</li> <li>• (Tools are not secured): “During the altercation, one of the prisoners hit me in the head with a bolt. The bolt was about seven inches long.” Daniels decl. ¶ 4, Exhibit 1.</li> <li>• (Tools are not secured): “The guy who was paid with pills beat another man on the tier with a broomstick.” Sturgent decl. ¶ 3, Exhibit 1.</li> <li>• (Tools are not secured): “(They) raped me with the handle of a broomstick.” C.W. decl. ¶ 4, Rec. Doc. 14-4.</li> <li>• (Tools are not secured): “While I was there, the tier rep would hit me with a broom. It left welts.” Gibson decl. ¶ 5, Rec. Doc. 14-4.</li> <li>• (Tools are not secured): “There is a pair of shackles in cell eight that are used by other inmates as a weapon and used to threaten people with.” Pierce decl. ¶ 4, Rec. Doc. 14-4.</li> <li>• (Tools are not secured): “I was threatened in cell eight that if I didn’t give them my mental health medication that I would not wake up the next morning and that I would be beat with a pair of shackles that inmates had inside of the cell that were used as a weapon. While in the shower I was approached by the same group of men who physically assaulted me. They grabbed a broomstick and began to slap me on my rear end with the broomstick. They then told me if I don’t give them my mental health medication the broomstick was going up my butt.” Simonson decl. ¶¶ 6-7,</li> </ul> |

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|  | <p>Rec. Doc. 14-4.</p> <ul style="list-style-type: none"> <li>• (Tools are not secured): “The guys tied me up with ripped up jumpers and some other stuff they found on the tier. Then they threw me in the shower. They were hitting me with slippers and tried to put a broomstick up my butt.” Tabb decl. ¶ 2, Rec. Doc. 14-4.</li> <li>• (Tools are not secured): “One of them used a broomstick. They hit him so hard with it, the broomstick broke. Another guy used a cooler lid. He broke the lid on the man during the beating too. I saw them tear the flesh right off the man’s arm from the beating. Afterwards, you could see big knots all over his face and head. ... The man was in the hospital for several days.” Picard decl. ¶¶ 3-5, Rec. Doc. 56-2.</li> <li>• (Tools are not secured): “I got off the phone and another young guy broke a broomstick to use as a weapon. I started banging on the door and pushing the call button to get help. A deputy came and I pointed at the guys, but the deputy didn’t do anything. I left the door and grabbed the cooler lid to use as a shield. Someone came up behind me, though, and hit me with another cooler lid. Someone else hit me with the cooler. They busted my head open and I started bleeding a lot. I fell down and blacked out for a few seconds. When I got back up, the guards were on the tier.... At the hospital, doctors put a bunch of staples in my head, and then I went back to jail.” Steel decl. ¶¶ 4-7, Rec. Doc. 56-2.</li> <li>• (Tools are not secured): “The beating lasted for approximately five minutes, during which time I was repeatedly punched, kicked, stomped, hit with the cooler, and picked up and slammed against the wall.” Williams decl. ¶ 4, Exhibit 1.</li> <li>• (Known attackers are not moved): “About three weeks ago I saw the same guy who attacked me, stomp a little guy until he was unconscious. The little guy had just come on the tier and was asking to use the phone when the big guy attacked him.” Rothschild decl. ¶ 10, Exhibit 1.</li> <li>• (Known attackers are not moved): (After sexual assault) “I notified the warden and filed a grievance. I was interviewed by the Sheriff’s investigative unit, and when I told them about the inmate who had done this to me, they immediately knew who I was talking about. They were acting like this prisoner had done this before to other men,</li> </ul> |



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|  | <p>and that they were fully aware of his behavior.” Richard decl. ¶ 6, Rec. Doc. 14-4.</p> <ul style="list-style-type: none"> <li>• (Known attackers are not moved): “There was an old guy (Terry) on the tier with me. He was about 70 years old and he took mental health medicine. Around the middle of June, Terry was walking around asking for coffee when this young guy punched Terry in the face. Terry fell and hit the back of his head on the metal table and then on the ground. The next day SOD came on the tier and announced that Terry was “fighting for his life.” The young guy who hurt Terry had hurt other people really badly before, but deputies never took him off the mental health tier. Terry never came back on the tier. I don’t know what happened to him.” Anderson decl. ¶ 1-5, Rec. Doc. 81-1. <i>See also</i>, Yates decl., (Terry Smith can no longer walk or talk or use his hands) Rec. Doc. 81-1. <i>See also</i>, Steel decl. ¶¶ 6-7, Rec. Doc. 56-2.</li> <li>• (Known attacker not moved): (After a stabbing) “When (Sgt.) Ruiz came down, he told us exactly what had happened with regard to the stabbing and he knew who the people responsible were. He named all the people that were involved in the jumping and stabbing. He also told us that nothing would happen to these people because the victim would not identify who attacked him. I don’t know how the deputies found out who was involved in the stabbing, but however they found out, the information was true. I can’t understand how they know who is responsible but still refuse to act. It is impossible to feel safe in OPP when guards know who is responsible for violence and still do nothing.” Hearn decl. ¶ 13-15, Rec. Doc. 56-2.</li> <li>• (Known attack not prevented): “Later on, the same guy jumped me. Prior to his attack, I filed a grievance alerting jail staff to his threats and my fear for my safety. The fact that guards didn’t prevent him from attacking me when they could have really traumatizes me.” Walters decl. ¶ 5, Rec. Doc. 14-4.</li> <li>• (Shackles on doors): “I am concerned that the gates on the outside of my dorm are being locked with shackles. The deputies do this when there is no staff attending to the control booth. I have seen deputies attempt to unlock the gate unsuccessfully. This means they cannot get onto the dorm, or get us off the dorm in an emergency situation.” Williams decl. ¶¶ 2-3, Exhibit 1.</li> </ul> |

| Specific Systemic Common Contentions by Plaintiff Class in Complaint  | Supporting Declarations Demonstrating That Deficiencies are Class-Wide and Systemic, Rather Than Individualized Instances of Harm  |
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| <p><b>Inadequate staffing policies constitute deliberate indifference and create a substantial risk of harm to class members:</b><br/> Defendant’s staffing policies are dangerously deficient. Rec. Doc. 1 ¶¶ 3, 9. Deputies fail to supervise the housing tiers—they do not perform cell checks or regular inspections of the living areas. Rec. Doc. 1 ¶ 140. Deputies lack the training and supervision necessary to care for people in their custody, and Defendants do not supervise staff to ensure that they take their obligation to protect prisoners seriously. Rec. Doc. 1 ¶¶ 39, 141. As a result, a culture of brutal violence has flourished throughout the facility. Rec. Doc. 1 ¶ 4.</p> | <ul style="list-style-type: none"> <li>• “A culture of violence exists across all facilities under Sheriff Gusman’s control, due to guards’ failure to patrol tiers, enforce safety measures and respond efficiently to emergencies.” Picou decl. ¶ 5, Rec. Doc. 2-3.</li> <li>• “I witnessed most violent acts occurring when guards were absent from the tier for several hours at a time. When guards do make rounds, they perpetuate the violence by taunting and inciting prisoners through verbal abuse.” Picou decl. ¶ 6, Rec. Doc. 2-3.</li> <li>• “During the attack, a deputy came on the floor, but he never looked into the tier. If he had, he could have seen what was happening. But the deputies don’t really care what happens to us. All our safety is at risk. The guards aren’t doing their jobs....” Sylvester decl. ¶ 5, 9, Rec. Doc. 2-2.</li> <li>• “Fights are allowed in here. Guards let them do it, either by putting guys together they know are going to fight, or by not stopping the fights once guys get into it. But mostly it’s because they’re never around. You only see a guard a few times a day.” Patterson decl. ¶ 6, Rec. Doc. 2-3.</li> <li>• “When a fight or incident occurs, we are discouraged from reporting it. If someone rats to a guard, the guards will tip off the tier to who the rat is, so the guys on the tier can punish or intimidate him. Guards aren’t around for the fights and they encourage violence by telling the prisoners who reports them.” Dixon decl. ¶ 7-8, Rec. Doc. 2-3.</li> <li>• “During my time there I witnessed guards encourage violence and cheer fights on between inmates until the first blood was drawn. I had to remain constantly alert to an attack from guards or other guys on the tier. When I tried to draw attention to the situation, I was intimidated, harassed and ignored by the Sheriff’s staff.” Hobson decl. ¶ 2, Rec. Doc. 2-3.</li> <li>• “The guards yelled at us and called us rats for talking to our lawyers about what is happening.” J.J. decl. ¶ 10, Rec. Doc. 2-3.</li> <li>• “The guards put me on the tier with this small young guy who was just coming on too. I watched as some bigger guys stabbed the little one a bunch of times in his neck and body. Two of them had knives. The little guy tried to fight back and was yelling loudly. Guards finally came and opened the gate to the tier, but would not come on the tier. The kid made his way out and immediately lay down. His</li> </ul> |

| Specific Systemic Common Contentions by Plaintiff Class in Complaint | Supporting Declarations Demonstrating That Deficiencies are Class-Wide and Systemic, Rather Than Individualized Instances of Harm   |
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|  | <p>blood was pooling all over him.” Miorana decl. ¶ 3- 4, Rec. Doc. 2-3.</p> <ul style="list-style-type: none"> <li>• “After being transferred to C-1, cell 5, left side, I was physically assaulted by two of my cellmates. The altercation took place December 22, 2012 around 10 a.m. I was beaten for around three minutes. I screamed and kicked the door during the assault in order to get the guard’s attention. One guard, Deputy Martin, heard my screams and responded only by yelling rude comments back towards me.” Bourgeois decl. ¶ 5, Exhibit 1.</li> <li>• “There were deputies in the booth when we got stabbed, but they weren’t watching the tier. When they finally realized what was going on, they took me and my friend off the tier because we were bleeding really badly. I had blood all over my pajamas.” Butler decl. ¶ 3, Exhibit 1.</li> <li>• “Before the assault started, there was a deputy in the guard booth. For some reason, the deputy left the facility when the gang started to surround me. Within minutes of the deputy leaving, the gang jumped me. The gang jumped on another prisoner because he tried to diffuse the situation. After several deputies arrived to break up the fight, I was transported to the hospital for medical treatment. I received multiple stiches to my face.” Daniels decl. ¶¶ 5-6, Exhibit 1.</li> <li>• “While I was in Conchetta, deputies did not respond to violence in the dorms. I witnessed several fights that occurred in plain view of the cameras, but deputies never responded to stop the fights, or even came to see if people involved in the fights needed medical care.... Sometimes the deputies would stop responding to the call button completely if prisoners had called for the deputy several times already.” Ellis decl. ¶ 4, Exhibit 1.</li> <li>• “I continued to cry out for help, and, eventually, a female deputy, Lt. N., came to my cell. She saw me tied up and naked, but all she said was ‘looks like you need to get yourself a boyfriend.’ She walked away and left me like that. I stayed tied up until morning. ...(The attacks continued) I tried to tell a deputy I was being attacked. But when I told Sgt. T. that I was being attacked and I needed help, he replied ‘that is what I got for coming to jail.’” C.W. decl. ¶¶ 4, 7, Rec. Doc. 14-4. <i>See also</i>, Washington decl. ¶¶ 2, 4, Rec. Doc. 14-4.</li> <li>• “Even though I’m on a medical tier, guards don’t stay on</li> </ul> |

| Specific Systemic Common Contentions by Plaintiff Class in Complaint | Supporting Declarations Demonstrating That Deficiencies are Class-Wide and Systemic, Rather Than Individualized Instances of Harm  |
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|  | <p>the floor. They sleep all the time or they leave the guard booth. They don't do their jobs. There have been times when guys on my tier will bottom out or will have a seizure and we have to kick on the door to get the guard's attention. It takes a really long time for the guards to respond to an emergency. We're really lucky no one has died back here." Everett decl. ¶¶ 2-3, Rec. Doc. 14-4.</p> <ul style="list-style-type: none"> <li>• "Guards told my cellmates in cell eight that I told on them for having weapons in the cell and that has made me a target. Inmates throw things at me and hit me with objects every chance they get. During the evening inmates are out of their cells and constantly hit me with things and threaten to kill me. I have not been able to get any sleep because I fear when I go to sleep inmates will pop open my cell and kill me. I have been considering going on suicide watch for protection from other inmates on my tier." Pierce decl. ¶¶ 5-7, Rec. Doc. 14-4.</li> <li>• (After being tied up and assaulted) I was yelling for a deputy the whole time, but nobody came. Deputies didn't take me to the hospital until much later the next day." Tabb decl. ¶ 3, Rec. Doc. 14-4.</li> <li>• "Guards are slow to respond to fights and emergencies. They also have placed me in dangerous situations. When I complained once about being put in a cell with someone who was threatening me, a guard said 'let them kill each other' to another guard." Walters decl. ¶ 4, Rec. Doc. 14-4.</li> <li>• (After a rape) "I whispered to the deputy on duty that night to pull me off the tier, which he did. Once he did, I told him I had been raped. He made me wait outside the guard booth while he called his superior. I could hear him talking on the phone in the booth. I heard him say 'you want me to put him back on the tier where he was attacked?' There was a pause and then he said something like 'I'm not doing that.' Shortly after the phone call he brought me downstairs with another deputy. The ranking officer on duty yelled at me 'you better not be shitting me!' Then he asked if I was raped, why would I wait so long to report it? It wasn't until I broke down and started crying that he told deputies to put me in a holding tank. A little while later, SOD officers came over. They were really upset to be called over, as if I had ruined their night of watching TV because I had been raped. They had no sensitivity at all. One of them said 'we get these reports all the time and they are not true. This is</li> </ul> |

| Specific Systemic Common Contentions by Plaintiff Class in Complaint   | Supporting Declarations Demonstrating That Deficiencies are Class-Wide and Systemic, Rather Than Individualized Instances of Harm   |
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|  | <p>your opportunity to fess up.’ Then he asked ‘did you get the dick in your ass? In your mouth? Or did they just touch you? We don’t have time for this foolishness.’ They never asked me to identify my attackers even though I offered. I did tell jail staff which bunks they slept in. It took several more hours before they brought me to the hospital. By the time I got there it was almost 1 a.m. the deputy yelled across the crowded waiting room, ‘we need a sexual assault nurse!’ Everyone just looked at me. I was humiliated.” Morgan decl. ¶¶ 8-11, Exhibit 1.</p>  |
| <p><b>Inadequate protective custody policies constitute deliberate indifference and create a substantial risk of harm to class members:</b><br/>                     The protective custody tier for vulnerable individuals does not keep people safe from harm and individuals are often placed on extended isolation when they seek protection from harm. Rec. Doc. 1 ¶¶ 5, 143.</p> | <ul style="list-style-type: none"> <li>• “We’re not actually on protective custody up here. The deputies are never around and all the cells pop open. No one is doing their job. They’re all too busy covering up for each other.” Lewis decl. ¶ 12, Rec. Doc. 2-2.</li> <li>• (On the youth protective custody tier) “When the cells opened I walked onto the tier and there were three or four guys beating the new kid. They beat him to the floor and then kicked and stomped him. It lasted a long time and he was bleeding really badly from his head. When they finally stopped, he was just lying on the ground, not moving. I really thought he was dead for a minute. Then he dragged himself over to the door and banged on it until the deputy on duty finally opened it up and pulled him off the tier. When he came back to the tier the next day, he had staples in his head.” A.J. decl. ¶¶ 4-6, Exhibit 1.</li> <li>• “After the hospital, I had to spend thirty days in the hole, even though I had been stabbed. The hole is a disciplinary tier where you are locked in a cell for 23 hours a day and don’t have access to a phone, TV, family visits and other privileges.” Butler decl. ¶ 3, Exhibit 1.</li> <li>• “After the doctors at the hospital treated my stab wounds, officers put me in the hole, which is a punishment tier where we are on lockdown 23 hours a day. We don’t have a phone or TV on the tier, either. I don’t understand why I was punished for getting stabbed while I was asleep.” Rothschild decl. ¶ 4, Exhibit 1.</li> <li>• “I am currently on suicide watch on A-4 of Templeman v. because I fear for my safety in other parts of OPP. My clothing was taken from me when I entered the suicide tier two weeks ago. I can only wear a suicide proof garment, leaving my arms and legs bare. ... These conditions are difficult to endure, but I am deeply worried that I will be</li> </ul> |

| Specific Systemic Common Contentions by Plaintiff Class in Complaint  | Supporting Declarations Demonstrating That Deficiencies are Class-Wide and Systemic, Rather Than Individualized Instances of Harm  |
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|   | <p>hurt in other parts of OPP. To stay safe, I have no choice but to remain on the restrictive suicide tier.” Ellis decl. ¶ 5, Exhibit 1.</p> <ul style="list-style-type: none"> <li>• “I asked to be moved off multiple tiers because I do not feel safe. Every time I moved officers would put me in the hole or on lockdown, either because they did not have anywhere else to put me, or as punishment for leaving the tier. The most recent time I was in the hole they gave me a 60 day sentence. I don’t understand why I should lose all of my privileges because I am unsafe.” Sturgent decl. ¶ 2, Exhibit 1.</li> <li>• (After a sexual assault) I was transferred to different tiers and facilities a number of times. I spent a week and a half on the tenth floor HOD (psych unit) which was horrible. I don’t know why I was there, they kept asking me if I wanted to hurt myself or others and I kept telling them that I didn’t.” Richard decl. ¶ 7, Rec. Doc. 14-4.</li> <li>• (After a rape) “I went back to Conchetta after the hospital and spent the night in the holding tank. The next morning deputies woke me up and said they were putting me on suicide watch because it is ‘standard procedure’ for these situations. I never told anybody that I wanted to hurt myself. When I got to suicide watch at Templeman, they stripped me down and put me in a cell with three other half naked men. I spent the rest of the day and night there. The next morning (Dr.) Higgins pulled me for a visit. I tried to report the rape but he said ‘I don’t want to hear about your attack. Are you suicidal or homicidal?’ I told him no to both, so he put me on A-1.” Morgan decl. ¶¶ 14-15, Exhibit 1.</li> <li>• “We still aren’t safe even though we are on protective custody. Deputies leave the tier unmonitored, or they let people out on the tier at the same time who aren’t supposed to be in contact with each other. I have seen a few fights because of deputies opening the wrong cells at the same time.” Miorana decl. ¶ 3, Exhibit 1.</li> <li>• “Even after I was protective custody I got jumped because the guards do not protect us.” J.J. decl. ¶ 11, Rec. Doc. 2-3.</li> </ul> |
| <p><b>Inadequate sexual assault prevention policies constitute deliberate indifference and create a substantial risk of</b></p> | <ul style="list-style-type: none"> <li>• “In August 2011 I was raped by two other cellmates, M.G. and F.L. in HOD 5, cell 2, in a ten man cell. It was night time and these two men attacked me, tied me up to a bunk bed with bed sheets, stripped me naked, and raped me with</li> </ul>   |

| Specific Systemic Common Contentions by Plaintiff Class in Complaint              | Supporting Declarations Demonstrating That Deficiencies are Class-Wide and Systemic, Rather Than Individualized Instances of Harm  |
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| <p><b>harm to class members:</b><br/>Rape is rampant. Rec. Doc. 1 ¶¶ 2, 4, 7.</p> | <p>a handle of a broom. I stayed there, naked and tied up to the bed. ... For at least another month, maybe longer, my attackers M.G. and F.L. continued to assault me. They would take me into the shower and jerk off on me, and make me perform oral sex on them. C.W. decl. ¶ 3, 4, 6, Rec. Doc. 14-4. <i>See also:</i></p> <ul style="list-style-type: none"> <li>• “I witnessed a cellmate, C.W., get raped by two other cellmates, M.G. and F.L. It was night time and (they) wrested him to the floor and raped him with a broom. After they were done, they tied (him) up with ripped up pieces of a sheet to a bunk bed. C.W. was naked and bleeding. At about 1 a.m. a female deputy, Lt. N., came by and saw C.W. tied up and bleeding. C.W. asked to be untied but she laughed at him and told him he was lying. She said it looked like C.W. needed to “find himself a man,” like a boyfriend, to take care of him and protect him. C.W. stayed tied up until morning. C.W. stayed on my tier until October 2011. For the remainder of the time, M.G. and F.L. forced C.W. to perform oral sex, or would force him into the shower where they would ejaculate on him.” Washington decl. ¶ 2-3, Rec. Doc. 14-4.</li> <li>• “After I was moved to the B-3 tier of the Old Parish facility this past winter, I have seen other prisoners have anal sex with two different men. One of these men is named Bob, the other is a smaller man who is gay. Neither of them are consenting—rather, they are being forced to do it by the other prisoners and they don’t fight back because they are terrified.” Washington decl. ¶ 5, Rec. Doc. 14-4.</li> <li>• “I was later put on a protective custody tier in HOD with a transgendered prisoner. Guys kept giving her a hard time and sexually harassed her. One guy would take her in the shower and rape her at knife point. He said ‘I’ll kill you if you don’t do it.’” Montecino decl. ¶ 3, Rec. Doc. 14-4.</li> <li>• “I have been subject to physical and sexual assaults from other prisoners while housed at HOD. ... I was sexually assaulted by the tier rep, Chris. Early one morning in the middle of March, Chris forced me to get into the shower with him. He had a shank on him, so I was terrified and I did as he instructed. He told me to face the wall and lather up my butt, and then he stood behind me, rubbed his penis on my butt, and ejaculated on me.” Richard decl. ¶ 2, 5, Rec. Doc. 14-4.</li> <li>• “While using the restroom in the holding tank I was</li> </ul> |

| Specific Systemic Common Contentions by Plaintiff Class in Complaint  | Supporting Declarations Demonstrating That Deficiencies are Class-Wide and Systemic, Rather Than Individualized Instances of Harm   |
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|   | <p>approached by another inmate from behind with a sharp metal object. He pressed the sharp object to my neck and told me to suck his di*k. I assumed he would kill me if I didn't do what he told me to. I was then forced to perform oral sex on the inmate in the restroom area of the holding tank.” Turner decl. ¶ 3, Rec. Doc. 14-4.</p> <ul style="list-style-type: none"> <li>• “Some of them raped me at knifepoint and then I ran off the tier.” Doe decl. ¶ 4, Rec. Doc. 81-1.</li> <li>• “I blacked out for a little while and when I came back to consciousness I was lying on my stomach on the floor of the shower. I could feel one guy holding my feet apart and another guy was on top of me holding down my shoulders. I was completely naked. Then I felt pressure and excruciating pain as he penetrated me anally. After awhile he got off and someone else got on top of me and raped me again. The first man who raped me made me perform oral sex. The whole thing felt like an eternity, but I think it only lasted for several minutes.” Morgan decl. ¶ 5, Exhibit 1.</li> <li>• “I was raped in September when I first got to jail. I sent a declaration to the court about the attack. Since then I have not received any medical treatment for the rape. I’m going to be on the streets again one day and I want to go back to my family a whole man. But now I’m worried about my health. I have flashbacks about the attack. It’s hard to sleep. It’s hard to be in this place with no help.” Doe decl. ¶¶ 3-5, Exhibit 1.</li> </ul> |
| <p><b>Inadequate internal investigation policies constitute deliberate indifference and create a substantial risk of harm to class members:</b><br/>                     Defendant fails to conduct thorough investigations or take corrective action in response to known deficiencies. Rec. Doc. 1 ¶ 141.</p> | <ul style="list-style-type: none"> <li>• “I have filed many grievances and observed deputies’ responses to my and other prisoners’ grievances. I have found that they will answer grievances pertaining to questions about court dates, commissary, and work release programs. However, they don’t answer anything that pertains to breakdowns in security, breakdowns in medical care, or breakdowns in classification—like grievances about attempted rapes and batteries, perpetuated by guards or inmates.” Washington decl. ¶ 12, Rec. Doc. 14-4.</li> <li>• (After altercation with deputies): “They made me wait a long time to go to the hospital. While I was waiting, SOD took pictures of my injuries. I had bruises all over my back and ribs and half my face was badly swollen and bruised. SOD told me they would ‘look into it’ but they never asked me for my side of the story. I filed grievances on the beating. I got a response back from Sheriff Gusman. He said that they were investigating the incident and that</li> </ul>   |



| Specific Systemic Common Contentions by Plaintiff Class in Complaint | Supporting Declarations Demonstrating That Deficiencies are Class-Wide and Systemic, Rather Than Individualized Instances of Harm   |
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|  | <p>someone would come talk to me about what happened. Nobody from this jail has ever tried to interview me about what happened, though. I filed a second step grievance but never received a response.” King decl. ¶¶ 5, 8, Exhibit 1.</p> <ul style="list-style-type: none"> <li>• “I was bleeding badly. The officers took me downstairs and then SOD took me to the hospital. I tried to tell SOD what happened but one of them told me I was talking “too aggressive” and slapped me, like he didn’t care that I had just been stabbed. They never asked for my side of the story and no one took pictures of my injuries.” Rothschild decl. ¶ 3, Exhibit 1.</li> <li>• (After sexual assault) I notified the warden and filed a grievance. I was interviewed by the Sheriff’s investigative unit, and when I told them about the inmate who had done this to me, they immediately knew who I was talking about. They were acting like this prisoner had done this before to other men, and that they were fully aware of his behavior.” Richard decl. ¶ 6, Rec. Doc. 14-4.</li> <li>• (After an assault) “I tried to file grievances on some of the violent things that happened to me, but it took three or four days before guards would even take the grievances. It was like they didn’t want to touch them.” Tabb decl. ¶ 6, Rec. Doc. 14-4.</li> <li>• (After a rape) “I reported the attack to deputies, rank and SOD even though my attackers said they would find and kill me if I told anyone. No one ever brought me to medical or gave me STD testing. I am scared, lonely and afraid for my life.” Doe decl. ¶ 5-6, Rec. Doc. 81-1.</li> <li>• “On April 30, 2012 I talked to someone from the Southern Poverty Law Center about several guards who assaulted me earlier in the week. I told SPLC the truth and later signed a statement about what happened to me. Last weekend I went to University Hospital for a rape kit. On May 2, 2012 SOD asked me questions about what happened. They videotaped the interview. They told me I was putting people’s lives in danger for telling my story and that according to my medical records it was impossible for me to have been assaulted. They said that other guys on the tier said that I made the story up so that I would not get sent to Old Parish Prison. They made me feel like no one would believe me. For the whole interview I kept telling them the same thing I told my lawyers the week before. I also kept saying ‘I wish I had come forward earlier.’ I think if I had come forward</li> </ul> |

| Specific Systemic Common Contentions by Plaintiff Class in Complaint | Supporting Declarations Demonstrating That Deficiencies are Class-Wide and Systemic, Rather Than Individualized Instances of Harm   |
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|  | <p>earlier the doctors would have been able to tell what happened to me. I felt really scared and intimidated the whole time talking with SOD. Finally I asked SOD if I was going to get charged. He said he didn't know, but that I hadn't admitted that I made it up yet. I was scared so I said that I made it up. I didn't know what else to do. I did not make up the story. Those officers really hurt me and no one stopped it. Now SOD is making me feel like I have done something wrong rather than making me feel like they are helping me. I want to go to court about this because what those officers did to me was wrong." Johnson decl. ¶ 1-7, Rec. Doc. 23-4. <i>See also</i> Rec. Doc. 25, ex. G- H and Rec. Doc. 30-5; 30-6.</p> <ul style="list-style-type: none"> <li>• "I've filed over twenty grievances during my incarceration, including on violence and understaffing. Almost all of the grievances I receive responses to are marked as a 'request for service' and no space provided to file a step two grievance. I have requested an explanation of the difference between a 'request for service' and a 'grievance' but jail officials have failed to clarify the difference for me. Oftentimes I never even receive a response back to my grievance." Rhodes decl. ¶ 4-5, Rec. Doc. 23-4.</li> <li>• (After a serious stabbing with a punctured lung): "SOD investigated the incident, but the only person that they talked to was the tier rep (who committed the stabbing.) At first I thought SOD pulled the tier rep out because he was getting in trouble, but instead, he came back to the tier a little while later. The tier rep bragged that SOD trusted him and had thanked him for his honesty about the stabbing. Our entire tier got put on restriction because of the stabbing. None of us could make phone calls or have visits, even though most of us did not have anything to do with what happened. I wanted to write to rank and tell them who was responsible, but I was afraid that I could be hurt if I did. (Sgt.) Ruiz told us that he knew exactly what had happened with regard to the stabbing and he knew who the people responsible were. He named all the people who were involved in the jumping and the stabbing. He also told us that nothing would happen to these people because the victim would not identify who hurt him." Hearn decl. ¶ 9-13, Rec. Doc. 56-2.</li> <li>• "Before they took me to the hospital, SOD asked if I wanted to press charges. They said if I didn't, 'then you</li> </ul> |

| Specific Systemic Common Contentions by Plaintiff Class in Complaint  | Supporting Declarations Demonstrating That Deficiencies are Class-Wide and Systemic, Rather Than Individualized Instances of Harm   |
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|   | <p>deserved having this happen to you.’ I am worried I will see my attackers again either at sick call or on the docks for court. I haven’t seen SOD since I said I would press charges.” (King was then put back on the exact same tier he was attacked on.) King decl. ¶ 7, 9, Rec. Doc. 56-2.</p> <ul style="list-style-type: none"> <li>• (After a very serious beating that resulted in a metal plate being installed in his face and his jaw being wired shut) “I have not been interviewed about the attack on me. There has not been an investigation to my knowledge and I have not had communication with any SOD officers.” Lewis decl. ¶ 6, Rec. Doc. 56-2.</li> <li>• (After a serious beating of mentally ill man) “Later that night guards took him off the tier. SOD never investigated probably because guys in the tent said the man just fell off his bunk. There weren’t any guards around who witnessed the beating. The man was in the hospital for several days.” Picard decl. ¶¶ 4-5, Rec. Doc. 56-2.</li> </ul>  |
| <p><b>Deficient conditions and policies in the housing of youth in custody of OPP constitute deliberate indifference and create a substantial risk of harm to class members:</b><br/>                     Conditions for youth in custody are unsafe. Youth are subjected to prolonged cell confinement, as the only means of keeping them safe. Studies have shown the use of cell isolation on children is extremely damaging. Rec. Doc. 1 ¶ 145; Rec. Doc. 1 in civil action no, 12-138, under seal.</p> | <ul style="list-style-type: none"> <li>• “Guards are aware of the rampant violence on the juvenile tier of Templeman V, yet they do nothing to curb or prevent it. In fact they provoke violence by turning off the televisions, aware that they lack of stimulation leads to fights. . . I witnessed most violent acts occurring when guards were absent from the tier for several hours at a time. When guards do make rounds, they perpetuate the violence...” Picou decl. ¶ 1-2, Rec. Doc. 2-3.</li> <li>• “Everyone on my (youth) protective custody tier has either been hurt in this jail already, or has come close to being hurt. ...New people are always coming on our tier because people keep getting hurt in the general population youth tier.” A.J. decl. ¶ 2, Exhibit 1.</li> <li>• “Over the summer, guards were putting juveniles on the protective custody tier with adults. I saw multiple kids come over from Old Parish Prison with serious injuries. Some of their faces were messed up from attacks on the juvenile tier. Others had stab wounds.” Miorana decl. ¶ 2, Exhibit 1.</li> <li>• “When juveniles were in Templeman Phase Five, some of us got hit with broomsticks but I never saw a stabbing. Now that the regular juvenile tier is in Old Parish Prison, juveniles are stabbing each other. I know juveniles are getting stabbed because after they are attacked, they are sent over to the protective custody tier where I am. I have seen guys who have stab wounds in their legs, backs and</li> </ul> |

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|   | <p>necks. Someone new comes on my tier about every few weeks. Many of these new people were attacked almost immediately after they arrived in Old Parish Prison. I have been in jail over a year waiting to go to trial. During that time I have seen and been through things that no young person should have to witness or go through. I want to help restore justice, peace, and safety to Orleans Parish Prison because we are human beings and we are getting hurt.” JJ decl. ¶¶ 3-6, Exhibit 1.</p>   |
| <p><b>Mental Health</b></p>   |   |
| <p><b>Inadequate mental health screening constitutes deliberate indifference and creates a substantial risk of harm to class members:</b> Prisoners are not properly screened for mental health needs upon admission to the jail, and often are not meaningfully assessed for prolonged periods of time. Upon admission to OPP, Defendants have a policy of suspending medication for 30 days. Rec. Doc. 1 ¶¶ 6, 85. Failure to treat mental illness makes people with mental illness particularly susceptible to abuse, symptoms manifest acutely, and it causes some individuals to become suicidal. Rec. Doc. 1 ¶ 6.</p> | <ul style="list-style-type: none"> <li>• “Before I was arrested, I was taking prescription medication for my bipolar disorder. I have not gotten my medication here in OPP.” Jenkins decl. ¶ 3, Rec. Doc. 2-2.</li> <li>• “I suffer from several health conditions including stress and anxiety. My fiancé tried to bring my prescriptions to the jail to show the doctors what I was taking on the outside but the deputy said, ‘we don’t deal with that.’” Anderson decl. ¶ 2, Rec. Doc. 2-2.</li> <li>• “In addition to getting jumped three times, the medical staff here isn’t giving me my prescription medication. I am diagnosed with schizophrenia and depression. Before I got to jail, I was taking several mental health medications. Without these medications, I hear voices.” A.W. decl. ¶ 7, Exhibit 1.</li> <li>• “I was diagnosed with bipolar disorder and depression at St. Charles Mental Health facility in Luling, La. I was prescribed medications such as Tegretol, Seroquel, and other anxiety medications to help manage my disabilities. I informed the facility of my mental health disorders upon being booked. Additionally, the facility should be aware of my issues, as I received mental health medications in 2010 while housed at the House of Detention. I have filed grievances and sick calls to receive my medication. Additionally, I have met with psychiatrists in the facility. I have yet to receive my mental health medications since arriving here in September. Without my mental health medications, my ability to cope with these situations is slowly eroding.” Loga decl. ¶¶ 2-5, Exhibit 1.</li> <li>• “Before I got to OPP I was diagnosed with schizophrenia and bipolar disorder. I was taking prescription medication for these illnesses and my visual and auditory hallucinations before I got to OPP. When I arrived to Orleans Parish I met with Dr. Higgins for just a few</li> </ul> |

| Specific Systemic Common Contentions by Plaintiff Class in Complaint   | Supporting Declarations Demonstrating That Deficiencies are Class-Wide and Systemic, Rather Than Individualized Instances of Harm   |
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|  | <p>minutes, He discontinued all of my mental health medications except one which he weaned me off of. I haven't received any mental health medication for the past two months even though I have filed several sick calls and grievances asking for it. Some nights I cry myself to sleep because of my hallucinations and because I'm so scared for my life." Metrejean decl. ¶¶1-6, Rec. Doc. 14-4.</p> <ul style="list-style-type: none"> <li>• "I was taking medication for my bi-polar disorder before I came to jail, which I reported to jail at booking. I have yet to receive my medication in the facility."(and was subsequently housed on the suicide tier.) Morris decl. ¶ 5, Rec. Doc. 81-1.</li> <li>• "I was taking medicine for depression before I came to jail. I told them about it at booking but I never got my medicine. I told them again after I got hurt, but I still haven't seen a psychiatrist or received my medicine. They treat us like animals back here." Bates decl. ¶ 6, Rec. Doc. 81-1.</li> <li>• "Now I'm on suicide watch and I'm still not getting my mental health medicine that I reported at booking. I have filed sick calls and told Dr. Higgins about my medicine but he just brushed me off." King decl. ¶ 12, Rec. Doc. 56-2.</li> </ul>   |
| <p><b>Inadequate mental health care constitutes deliberate indifference and creates a substantial risk of harm to class members:</b><br/>                     People living with mental illness languish without treatment, left vulnerable to physical and sexual abuse. Rec. Doc. 1 ¶¶ 2, 86. There is an absence of meaningful mental health services. Id. The mental health policies and practices at the jail are constitutionally deficient. Rec. Doc. 1 ¶ 3. OPP under-identifies people living with mental illness, resulting in their going without treatment. Rec. Doc. 1 ¶ 6, 87. Defendant Gore estimated that 45% of the OPP population had some form</p> | <ul style="list-style-type: none"> <li>• "Recently on the medical tier, a guy who really needs some mental healthcare lunged at me and scratched me under my jaw with something sharp. It left a mark from my chin to my jaw. I know he needs help and wasn't getting any, because I helped him fill out the sick calls before the incident. He told me all the prescription medication he was on prior to coming to jail. He also told me that he wasn't getting that medication in here. As far as I know, he never received treatment. The same guy got in another fight a few weeks later. He was trying to spit on us and gouge people's eyes out. I'm not mad at him. He needs help. If medical had only responded to those sick calls, these fights never would have happened." Dixon decl. ¶ 4, 5, Rec. Doc. 2-3.</li> <li>• "I put in several sick calls, but most times they are never answered. It took a really long time and lots of sick calls before I got any medicine. When I filed a grievance on not getting the medicine, they told me to file a sick call. I met a lot of people with mental health issues in here. None of them are getting the help they need. It's hard to keep waking up." Anderson decl. ¶ 3, 8, Rec. Doc. 2-2.</li> <li>• "Since I have been in TDC, I have filed over five</li> </ul> |

| Specific Systemic Common Contentions by Plaintiff Class in Complaint                                    | Supporting Declarations Demonstrating That Deficiencies are Class-Wide and Systemic, Rather Than Individualized Instances of Harm  |
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| <p>of mental health need, but that only 6% was receiving psychotropic medication. Rec. Doc. 1 ¶ 84.</p> | <p>grievances asking for my medication and a couple of sick calls. Twice, a deputy ripped up my grievances in front of me. When I did receive a response to one of my grievances, it said I did not report my medications at Central Lock Up. I don't remember if that is true or not, but I told a doctor about my prescriptions two days after I got to jail. Plus, I am telling them now, with these grievances. It's been about two and a half months and I'm still not getting my medication." A.W. decl. ¶ 8, Exhibit 1.</p> <ul style="list-style-type: none"> <li>• "I know Ricky was mentally ill. He couldn't read or write well, so I would help him write grievances. In the grievances I helped him write, he asked to see the psychiatrist and go to the mental hospital. The responses told him to file a sick call, or they would say that he had already been evaluated." Hernandez decl. ¶ 7, Exhibit 1.</li> <li>• "Lawrence has been diagnosed as having frontal lobe damage, mild mental retardation, attention deficit disorder, and serious cognitive delays. His cognitive deficiencies are apparent to anyone who meets him. Although Lawrence has been prescribed medications and counseling services to manage his disabilities, he has not, to my knowledge, received those medications or services in (OPP). In mid-January, Lawrence was assaulted by another prisoner in the facility. His jaw was broken during the altercation. He was not taken to the hospital until the next morning. His jaw is currently wired shut. The facility is not safe, especially for a young person with serious mental health disabilities." Joseph decl. ¶¶ 2-5, Exhibit 1.</li> <li>• "I recently got back from the mental hospital in Jackson, Louisiana. I was taking mental health medication before I got to jail for bipolar disorder schizophrenia and some other diagnosis. After I got to jail, though, doctors wouldn't give me my medicine even when I filed sick calls and reported my prescription to the doctors. Doctors at the mental hospital put me back on my medication, but now that I am back in OPP I am not getting the medicine." King decl. ¶ 2, Exhibit 1.</li> <li>• "I am diagnosed as bipolar, manic depressive. ... I have filed a sick call and a grievance asking to get my medicine in jail. I saw the psychiatrist a long time ago and told him about my situation. He still hasn't given me any medication. My mind is going crazy and I need help." Hernandez decl. ¶¶ 7-8, Rec. Doc. 14-4.</li> </ul> |

| Specific Systemic Common Contentions by Plaintiff Class in Complaint   | Supporting Declarations Demonstrating That Deficiencies are Class-Wide and Systemic, Rather Than Individualized Instances of Harm  |
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|  | <ul style="list-style-type: none"> <li>• “I have been locked up since June 2011 and I have been struggling a lot. Part of the reason I’m having a hard time is because I’m schizophrenic and I’m not getting any help. I hear voices telling me to hurt myself or others. In February I was struggling so much that I tried hanging myself. Guards weren’t around and I would have done it but the other guys on the tier calmed me down. ... I tell Dr. Higgins about the voices and he tells me ‘don’t listen to them.’ I hear the voices every day. It’s not getting better and they are harder to ignore.” Johnson decl. ¶ 5-8, Rec. Doc. 14-4.</li> <li>• “I am a mental health prisoner, diagnosed with schizophrenia. I have been taking medicine for it since I was a kid. The judge sent me to East Louisiana Mental Health Hospital at one point to get mental health help. When I came back to Orleans Parish Prison, I didn’t always get my medicine though. For the past couple of months I have not received any medicine at all. The psychiatrist tells me I have to come off of suicide watch in order to get my medication.” Perique decl. ¶ 3, Rec. Doc. 81-1.</li> <li>• “I was put in the hole in Old Parish Prison for ‘detox.’ My head was split open and both my eyes were swollen shut by the time they were finished.” King decl. ¶ 3, 5, Rec. Doc. 56-2.</li> <li>• “I am a diagnosed schizophrenic and I have been in jail since May of 2011. I put in multiple sick calls asking for my mental health medicine, but it took until November 2011 before jail doctors started giving me my medicine. I was hearing voices in jail without it.” Steel decl. ¶ 2, Rec. Doc. 56-2.</li> </ul> |
| <p><b>Inadequate suicide precautions constitutes deliberate indifference and creates a substantial risk of harm to class members:</b><br/>Suicidal prisoners are held in abhorrent conditions, almost-naked for days on direct observation, and then are transferred to lockdown tiers where they cannot access family, attorneys, or the outdoors. Actively psychotic</p> | <ul style="list-style-type: none"> <li>• “When I first arrived, I was put in the suicide tank. I waited in my underwear with the other guys. I couldn’t use the phone to call anyone. Guards wouldn’t let us out to go to the bathroom.” Miorana decl. ¶ 2, Rec. Doc. 2-3.</li> <li>• “After I arrived in HOD 10 the guards made me strip down in front of several people and put me in a vest without shoes. Then the guards put me in a shower that was full of urine and semen. I asked for my shoes, but the deputies refused to give them to me. Because I did not want to sit or lay in the mess, I stood the entire night.” J.J. decl. ¶ 5, Rec. Doc. 2-3.</li> <li>• “I have struggled with depression since I have been back here, but I didn’t want to say anything because I didn’t</li> </ul>  |

| Specific Systemic Common Contentions by Plaintiff Class in Complaint  | Supporting Declarations Demonstrating That Deficiencies are Class-Wide and Systemic, Rather Than Individualized Instances of Harm   |
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| <p>people live in overcrowded cells. Deputies do not walk the tiers. Rec. Doc. 1 ¶¶ 7, 89-91. OPSO staff is not trained in suicide prevention, which has resulted in prisoner deaths. Rec. Doc. 1 ¶¶ 95-98.</p> | <p>want to go up to HOD 10. I even had plans to commit suicide, but was too afraid to ask for help.” Dixon decl. ¶ 6, Rec. Doc. 2-3.</p> <ul style="list-style-type: none"> <li>• “Early on in Templeman V I got really depressed and thought about hurting myself. Before I did, though, I reported my thoughts of suicide. I was moved to the tenth floor House of Detention for suicide watch. Since that incident, I am afraid to tell guards if I feel suicidal. I do not want to tell them if I feel like hurting myself because I do not want to be sent back to the tenth floor.” J.J. decl. ¶¶ 5, 7, Rec. Doc. 2-3.</li> <li>• “I asked him why he didn’t just say he was suicidal to get help. He said he was afraid of going to the psych tier, like something worse would happen to him over there. Ricky’s death is sad. He had a family and a son and he hadn’t been convicted yet.” Hernandez decl. ¶ 8, 10, Exhibit 1.</li> <li>• “I spent a week and a half on the tenth floor HOD (psych unit) which was horrible. That place was straight out of a bad movie, as what was going on there was so ridiculous that I couldn’t believe it was really happening. There was a mentally ill man with a colostomy bag that would never get changed, and he sat in his own filth for days. There was another man, named R.R., who I think was mentally ill, and lots of other male prisoners would put their penises in his mouth. This happened repeatedly. Finally, there was a third mentally ill gay man who I saw get dragged by his legs down the hallway by other prisoners, while everyone hit him with their shoes and he cried out for help. I was desperate to get out of there.” Richard decl. ¶ 7, Rec. Doc. 14-4.</li> <li>• “I have tried to kill myself multiple times in jail. I have eaten tile, saved up my medicine and overdosed, and drank cleaning chemicals to try and hurt myself. Sometimes I told deputies that I was going to hurt myself, but they never did anything. They just let me try. Some of them told me, “Go on, and kill yourself.” Perique decl. ¶ 4, Rec. Doc. 81-1.</li> </ul> |
| <p><b>Lack of mental health staffing constitutes deliberate indifference, which results in a substantial risk of harm to members of the class:</b><br/>Defendant’s mental health department is dangerously</p>  | <ul style="list-style-type: none"> <li>• “The following morning I saw the psychiatrist. ...He had a really bad attitude and kept telling me if I want to talk, talk to a social worker. But it’s almost impossible to get an appointment with a social worker here.” Miorana decl. ¶ 2, Rec. Doc. 2-3.</li> <li>• “I am diagnosed with a mental health illness and I was taking prescription medication before my arrest. I have not</li> </ul>   |



| Specific Systemic Common Contentions by Plaintiff Class in Complaint   | Supporting Declarations Demonstrating That Deficiencies are Class-Wide and Systemic, Rather Than Individualized Instances of Harm   |
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| <p>understaffed. The jail employs one full time psychiatrist for 3400 (now 2300) people. Rec. Doc. 1 ¶ 92.</p>   | <p>received any medication since my arrest, though. A few weeks ago I had to say I was homicidal just so I could see a psychiatrist. I got to see him but I still don't have any medicine." Montecino decl. ¶ 6, Rec. Doc. 14-4.</p> <ul style="list-style-type: none"> <li>• "(After a rape) I felt that I needed to see a psychiatrist. I wanted to kill myself, with hope that would get me to see the psychiatrist and allow me to discuss what happened. After 24 hours on suicide watch I realized that I would not see a psychiatrist and I told the doctor that I didn't want to kill myself, I just wanted to see a psychiatrist to discuss what happened to me. I did not feel comfortable discussing it with any deputy in the facility; it had been made very clear to me that they didn't care about what happened to inmates here. Turner decl. ¶ 5, Rec. Doc. 14-4.</li> </ul>   |
| <p><b>Lack of staff training on mental health constitutes deliberate indifference and creates a substantial risk of harm to class members:</b><br/> Defendant fails to train and supervise mental health staff. Rec. Doc. 1 ¶ 93. OPSO staff is not trained on managing mentally ill individuals or on suicide prevention. Rec. Doc. 1 ¶¶ 95-98.</p> | <ul style="list-style-type: none"> <li>• (On suicide watch) "In addition, deputies beat some of the mentally ill prisoners when they start acting out because it seems like the deputies just don't know how to deal with them." Ellis decl. ¶ 5, Exhibit 1.</li> <li>• "Deputies and medical staff don't monitor us right, especially people suffering with mental illness. Nurses only come on the tier every other week and they don't even ask us how we're doing or how we're feeling. Deputies and ranking officers leave us alone of the tiers and leave our requests for help unanswered." Hernandez decl. ¶ 9, Exhibit 1.</li> <li>• "When I was in the hole there was an old man who told deputies all day long that he was suicidal. His cellmate was also telling them he was serious about committing suicide. The deputies just brushed him off until the old man really started to hang himself." Rothschild decl. ¶ 5, Exhibit 1.</li> <li>• "It was clear that LaShawn was mentally ill. When she was taken inside her cell the guards ordered her to take off all her clothes and LaShawn started cussing them out. I heard wrestling. Then I heard a female guard say to LaShawn, 'You wanna fu**in' fight me one on one? You wanna fu**in' play with me? Then I heard the sound of someone getting hit—like pop pop pop pop. I saw the guard leave the cell. My cell hadn't closed all the way so when the guards cleared out I left my cell to go take a look at LaShawn. Her right eye was busted open like she had been kicked or hit in the face with an object—the way she looked, there was no way someone did that with their fists. She was bleeding all over herself from her injuries, and</li> </ul> |

| Specific Systemic Common Contentions by Plaintiff Class in Complaint   | Supporting Declarations Demonstrating That Deficiencies are Class-Wide and Systemic, Rather Than Individualized Instances of Harm  |
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|  | <p>was saying her jaw was broke. She wasn't wearing any clothes except for her underwear." Smith decl. ¶ 4, Rec. Doc. 14-4.</p> <ul style="list-style-type: none"> <li>• "Most of the fights were young guys jumping people who I think needed mental health help because they couldn't comprehend anything. They were walking around without shoes because guys would steal their shoes. Sometimes the deputies would give them slippers, but then guys would steal their slippers. If deputies saw them barefoot at roll call, they usually didn't do anything about it." Walker decl. ¶ 3, Rec. Doc. 14-4.</li> <li>• "I have seen lots of other really sick guys on the suicide tier not get their medicine. Some have also tried to hurt themselves, other times the deputies hurt them. I have witnessed deputies along with ranking officers beat and choke guys on the mental health tiers. There is a guy on the tier right now who keeps trying to kill himself by ramming his head into the wall. Deputies just watch. Sometimes they yell at him to stop. But they never do anything else." Perique decl. ¶ 5-6, Rec. Doc. 81-1.</li> <li>• "Then once I was at Templeman, I saw a young guy eat his own feces and smear it on the wall. He climbed a bunk and tried to pull down a light fixture, so SOD responded with bean bag guns. This guy had obvious mental problems, but instead of giving him help, deputies called SOD." Morgan decl. ¶ 19, Exhibit 1.</li> <li>• "I was put on suicide watch, and when I got off, the psychiatrist was hard to talk to, like I did something wrong. I needed help, but he only spent a couple of minutes with me. I put in another sick call last week to see the psychiatrist. When I saw the psychiatrist he told me to talk to a counselor. He said, 'I'm a fu**ing doctor! That's it. I prescribe medicine. If you want to talk, talk to a fu**ing counselor.'" Anderson dec. ¶ 7, Rec. Doc. 2-2.</li> </ul> |
| <p><b>Inadequate medication administration policies constitute deliberate indifference and create a substantial risk of harm to class members:</b><br/>Medication administration is dangerously deficient.<br/>Medications are often not</p> | <ul style="list-style-type: none"> <li>• (Last Wednesday, February 6) "Ricky was also up with us and was laughing really hard throughout the night. He said he was high and seeing things in his cell. He must have taken too much medication. I think the nurses gave him 45 pills of both Depakote and Wellbutrin every other Wednesday. He kept the medicine on him and no one monitored him when he took it. Sometimes he would sell it to people on the tier. Other times he would just give it away. Around 2:00 in the morning, Ricky all of a sudden</li> </ul>  |

| Specific Systemic Common Contentions by Plaintiff Class in Complaint  | Supporting Declarations Demonstrating That Deficiencies are Class-Wide and Systemic, Rather Than Individualized Instances of Harm   |
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| <p>distributed, or are distributed in large doses, resulting in people overdosing, having medication stolen, or otherwise not receiving medication. Rec. Doc. 1 ¶ 93. This results in delays in treatment and worsening of serious illnesses and escalating violence.</p> | <p>stopped laughing. I thought he had gone to sleep. (The next morning) an ambulance arrived about an hour after the nurses started trying to revive him. The paramedics said Ricky was dead and refused to take him to the hospital.” Hernandez decl. ¶¶ 3, 4, 6, Exhibit 1.</p> <ul style="list-style-type: none"> <li>• “Since the doctors won’t help me, I have been using money from my commissary account to buy medicine from other guys on the tier. I can afford one pill a week so I take little bits to help with the voices.” A.W. decl. ¶ 8, Exhibit 1.</li> <li>• “I got into a physical altercation with my new cellmate after he attempted to steal my medications that I was given for my injuries.” Bourgeois decl. ¶ 7, Exhibit 1.</li> <li>• “There was also a bad fight because people on the tier were bored and paid someone two pills so that he would attack someone else.” Sturgent decl. ¶ 3, Exhibit 1.</li> <li>• “I was threatened in cell eight that if I didn’t give them my mental health medication that I would not wake up the next morning and that I would be beat with a pair of shackles that inmates had inside of the cell that were used as a weapon. While in the shower I was approached by the same group of men who physically assaulted me. They grabbed a broomstick and began to slap me on my rear end with the broomstick. They then told me if I don’t give them my mental health medication the broomstick was going up my butt.” Simonson decl. ¶¶ 6-7, Rec. Doc. 14-4.</li> </ul> |

Unlike *Wal-Mart*, this action does not require individualized inquiries to be made as to individual class members, nor does it require inquiry into the subjective intent of the Defendants or their employees or agents. The challenged conditions at OPP are precisely the type that are capable of “generat[ing] common answers” through class certification. *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). This is demonstrated most clearly by the proposed Consent Decree itself, which enumerates the specific policies and practices that Defendants have agreed to undertake in order to remedy the constitutional violations suffered as a result of the conditions in OPP. The deficiencies alleged in this case are not “amorphous” or unspecified

“systematic deficiencies” but rather specific allegations of deficiencies with concrete policies and practices, and specific failures at OPP that undoubtedly “are capable of class wide resolution.” *Id.*; compare *M.D. v. Perry*, 675 F.3d 832, 842-43 (5th Cir. 2012) (allegations that defendant failed to maintain a staff that functioned “properly” were too generic to establish commonality). A finding of commonality is appropriate.

### **C. The Typicality Requirement of Rule 23(a)(3) is Satisfied**

The typicality requirement is “not demanding,” *Lightbourn v. County of El Paso, Tex.*, 118 F.3d 421, 426 (5th Cir. 1997), and is easily met here. Where “the class representative’s claims have the same essential characteristics of those of the putative class,” typicality is established. *Stirman v. Exxon Corp.*, 280 F.3d 554, 562 (5th Cir. 2002) (citations omitted). There is no question that the class representatives here “possess the same interest and suffer the same injury” as other class members. *Gen. Tel. Co. of Sw.*, 457 U.S. 147, 156 (1982) (citing *E. Tex. Motor Freight Sys. v. Rodriguez*, 431 U.S. 395, 403 (1977) (quoting *Schlesinger v. Reservists Cttee. to Stop the War*, 418 U.S. 208, 216 (1974))).

Plaintiffs’ claims all arise out of the same unconstitutional conditions of confinement and present identical legal questions as the claims of the class. See *McWaters v. FEMA*, 237 F.R.D. 155, 158 (E.D. La. 2006). As evidenced by the proposed Consent Decree, the “representative plaintiffs share a common goal” of resolving those constitutional conditions. *Id.* Moreover, typicality is measured by the nature of the claims of the class representatives, not the specific facts from which those claims arose. See generally 485 NEWBERG ON CLASS ACTIONS § 3.15. In other words, when the same course of conduct affects both the lead plaintiffs and the putative class members, the typicality requirement is met even if the specific fact patterns underlying the individual claims may vary. See *McWaters*, 237 F.R.D. at 158; accord *Marisol A. v. Giuliani*, 929 F. Supp. 662, 691 (S.D.N.Y. 1996) (*aff’d* 126 F.3d 372 (2d Cir. 1997)) (commonality and

typicality met where suit alleged that supervisory failings caused pervasive abuse of wards of state regardless of whether “plaintiffs all suffer the same actual injury”).

Where, as here, “the circumstances described and the remedies sought are shared by all class members,” typicality is established. *J.D. v. Nagin*, 255 F.R.D. 406, 415 (E.D. La. 2009). Typicality does not turn on questions such as whether one inmate was raped while another’s eye socket was broken – such differences in precise injury are irrelevant to typicality where the Plaintiffs assert the same theories of liability, causes of harm, and remedies on behalf of the Class. Thus, the typicality requirement of Rule 23(a)(3) is satisfied.

**D. The Adequacy of Representation Requirement of Rule 23(a)(4) is Satisfied**

There is no question that Plaintiffs and their counsel will fairly and adequately protect the interests of the Settlement Class. *See* Fed. R. Civ. P. 23(a)(4). Plaintiffs have more than demonstrated their “willingness and ability” to represent the class by risking increased harm within the confines of OPP after being individually named as Plaintiffs so as to represent the interests of the class. *See Stirman*, 280 F.3d at 563 (describing Rule 23(a)(4) considerations); *accord Berger v. Compaq Computer Corp.*, 257 F.3d 475, 479 (5th Cir. 2001); *accord Feder v. Elec. Data Sys. Corp.*, 429 F.3d 125, 129-130 (5th Cir. 2005). Plaintiffs have placed themselves at risk of retribution by speaking out on behalf of their fellow class members.

Additionally, the Southern Poverty Law Center (“SPLC”) is possessed of both “the zeal and the confidence” to represent the plaintiff class. *See Stirman*, 280 F.3d at 563; *accord* Fed. R. Civ. P. 23(a)(4) (class representation proper where “the representative parties will fairly and adequately protect the interests of the class”). Lead counsel for SPLC is in her tenth year of practice, and has eight years of experience in handling civil rights cases. As the former legal

director for the ACLU of Louisiana, she has handled multiple prisoners' rights cases, including a collective action against the Acadia Parish jail.<sup>1</sup>

More significantly, SPLC has put the weight of its entire organization behind the litigation, including former deputy legal director Sheila Bedi, (no longer involved) and current legal director Mary Bauer. Ms. Bauer has practiced law for twenty years and has been the legal director for SPLC since 2009. Ms. Bauer has handled a broad range of cases including civil rights matters and is experienced in handling complex class action matters. She has personally served as class counsel in numerous class action lawsuits.<sup>2</sup> In addition, SPLC has extensive experience as class counsel in a variety of civil rights cases, including prisoners' rights cases. SPLC has been deemed adequate class counsel in approximately twenty cases. Thus Plaintiffs' attorneys are experienced advocates who are committed to this case. SPLC possesses sufficient resources to adequately prosecute this action, and is unquestionably appropriate counsel for the matter.

Nor is there any potential for conflict of interest between the proposed class representatives and the putative class members. No class member has an interest in maintaining the current conditions in the OPP. *See, e.g., Marisol A.*, 126 F.3d at 378 (broad-based relief sought to improve all services is in the interest of all class members). No conflict exists where the class "representatives have common interests with the unnamed members" and plaintiffs' claims "rest upon the practices and policies" of defendants. *J.D.*, 255 F.R.D. at 416 (no conflict among representatives and class members where claims of plaintiffs rest on defendants' policies and practices and plaintiffs seek the same remedies). This is evidenced by the fact that Plaintiffs have continued to file declarations on behalf of all prisoners housed in OPP throughout the

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<sup>1</sup> Exhibit 2, Schwartzmann decl.

<sup>2</sup> Exhibit 3, Bauer decl.

course of this litigation. Those declarations are wholly consistent with the claims of the named Plaintiffs. The named plaintiffs and the class they seek to represent have consistent interests in the remedies presented by the proposed Consent Decree.

#### **IV. THE SETTLEMENT CLASS SHOULD BE CERTIFIED UNDER RULE 23(B)(2)**

In addition to satisfying the prerequisites of Rule 23(a), the Settlement Class may properly be maintained under Rule 23(b)(2), which provides that class actions are appropriate when “the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.” Fed. R. Civ. P. 23(b)(2). Rule 23(b)(2) provides an ideal basis to certify a class in actions challenging a pattern and practice of constitutional violations, particularly violations that result from prison conditions, because class members share the same legal theory of harm, use the same evidence in support of their claim, and seek precisely the same relief. Indeed, the rule was designed especially for civil rights cases like this one seeking broad declaratory or injunctive relief for a large class of persons. *See* Fed. R. Civ. P. 23(b)(2) advisory committee’s note (1966); *see also Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 614 (1997); 485 NEWBERG ON CLASS ACTIONS § 4.11. It is for this reason that courts in this circuit and elsewhere routinely recognize that civil rights cases where injunctive relief is sought are the paradigm for a 23(b)(2) class. *See, e.g., Jones v. Diamond*, 519 F.2d 1090, 1099 (5th Cir. 1975); *see also Baby Neal ex rel. Kanter v. Casey*, 43 F.3d 48, 58-59 (3d Cir. 1994) (the Rule 23 (b)(2) class “serves most frequently as the vehicle for civil rights actions and other institutional reform cases that receive class action treatment”); *accord Dean v. Coughlin*, 107 F.R.D. 331, 335 (C.D.N.Y. 1985) (“[I]t is well established that civil rights actions are the paradigmatic 23(b)(2) class suits.”).

The Complaint and the proposed Consent Decree in this action address policies and practices that apply to all people housed in OPP. The failure of OPP to implement and/or enforce effective policies and practices has generated identical violations of law against each class member, and the injunctive and declaratory relief sought in the Complaint (and implemented through the proposed Consent Decree) require the same remedies to these violations, including (i) the institution of policies and practices that properly function to uphold the standards set forth by law and remedy existing violations, and (ii) enforcement of existing laws and policies that do the same.

The concrete, specific remedies in the proposed Consent Decree more than adequately establish that Defendants have “acted or refused to act on grounds that apply generally to the class,” thereby rendering this type of suit appropriate to pursue “final injunctive relief or corresponding declaratory relief . . . respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2); *see also Coley v. Clinton*, 635 F.2d 1364, 1378 (8th Cir. 1980) (Rule 23(b)(2) “is an especially appropriate vehicle for civil rights actions seeking . . . declaratory relief ‘for prison [] reform’”) (quoting 3B J. Moore & J. Kennedy, *Moore’s Fed. Prac.* ¶ 23.40(1)). That is, the proposed Consent Decree identifies exactly the policies and practices at OPP that affect the class as a whole, and targeted reform of those policies and practices will remedy the conditions as to the entire class. Indeed, injunctive and declaratory relief is particularly necessary here because of the strong likelihood of ongoing and future harm absent implementation of the proposed Consent Decree, and thus, certification under Rule 23(b)(2) is the most efficient and effective way to uphold the rights of all current and future prisoners subjected to the inhumane conditions in OPP.

### **CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court grant this motion for class certification.



Dated: February 14, 2013  
New Orleans, Louisiana

Respectfully Submitted,

FOR THE PLAINTIFF CLASS:

/s/ Katie Schwartzmann  
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Memorandum has been served upon all counsel of record by notice from this Court's CM/ECF filing system.

/s/ Katie Schwartzmann  
Katie M. Schwartzmann