

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

<p>JERMAINE DOCKERY, et al.,</p> <p style="padding-left: 40px;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>CHRISTOPHER EPPS, et al.</p> <p style="padding-left: 40px;">Defendants.</p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p>Civil Action No. 3:13-cv-00326-TSL-JCG</p> <p>ORAL ARGUMENT REQUESTED</p>
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PLAINTIFFS’ MOTION FOR CLASS CERTIFICATION

Plaintiffs ask the Court, pursuant to Federal Rule of Civil Procedure 23, to certify that they are proper representatives of the class and subclasses of all persons similarly situated, and permit this litigation to proceed as a class action pursuant to Rule 23(b)(2); and further, to appoint the undersigned counsel as counsel for the class, pursuant to Rule 23(g).

As set forth in Plaintiffs’ Memorandum of Law in Support of this motion, Plaintiffs are prisoners confined at the East Mississippi Correctional Facility (“EMCF”). Defendants, who are the state officials responsible for EMCF and are sued in their official capacities, have violated Plaintiffs’ Eighth Amendment rights by implementing practices and policies that create a substantial risk of serious harm to Plaintiffs and failing to act reasonably to address that risk.

Approximately 1,200 prisoners are confined at EMCF, constituting the class at issue in this motion. Plaintiffs bring this motion for the Court’s approval to proceed as class representatives for all persons similarly situated. The entire class is subject to unreasonable risks of serious harm caused by attacks by other inmates and excessive force by prison personnel as a result of a variety of policies and practices implemented by Defendants. The entire class of

prisoners is at unreasonable risk of serious harm due to dangerous environmental conditions and inadequate nutrition provided by Defendants. The entire class of prisoners is also at unreasonable risk of serious harm due to Defendants' dangerous and dysfunctional medical care system at EMCF.

In addition, those members of the class who have serious mental health needs — a subclass constituting approximately 1,000 prisoners — are at unreasonable risk of serious harm from a dangerous and dysfunctional mental health care system. Finally, the subclasses of prisoners held in solitary confinement at EMCF and in Housing Units 5 and 6 are subject to unreasonable risk of serious harm due to the extreme isolation and extraordinarily dangerous, harsh, and degrading conditions imposed on those prisoners.

To be entitled to prospective relief under the Eighth Amendment, Plaintiffs need not prove that the challenged conditions have resulted in actual injury, but only that they have resulted in an unreasonable *risk* of harm. *See, e.g., Farmer v. Brennan*, 511 U.S. 825, 837 (1994); *Gates v. Cook*, 376 F.3d, 323, 328, 339 (5th Cir. 2004). As further described in their Memorandum of Law in Support, Plaintiffs meet all requirements for certifications pursuant to Rule 23. The class is “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). There are questions of law and fact common to the class. Fed. R. Civ. P. 23(a)(2). The claims of the named class representatives are “typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). The named representatives will fairly and adequately represent the interests of the class. Fed. R. Civ. P. 23(a)(4). Finally, class certification should be authorized here because “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2). Plaintiffs' counsel can

and will “fairly and adequately represent the interests of the class,” Fed. R. Civ. P. 23(g)(1)(B), and should be appointed class counsel, based on the factors enumerated in Rule 23(g)(1)(A).

For the foregoing reasons, as described in greater detail in Plaintiffs’ Memorandum of Law in Support of this motion, Plaintiffs therefore request that the Court:

1. determine that Plaintiffs’ proposed class and subclasses meet the requirements of Rule 23(a) and 23(b)(2);
2. certify the designated class and subclasses;
3. and, pursuant to Rule 23(g), appoint current counsel for Plaintiffs as counsel for the class and subclasses.

In support of this Motion, Plaintiffs submit the exhibits listed below and an accompanying Memorandum of Law in Support.

1. Exhibit 1: Mississippi Department of Corrections, Daily Inmate Population;
2. Exhibit 2: Patients on Psych Meds;
3. Exhibit 3: Excerpts from Defendants’ Expert Report of Kenneth McGinnis and Tom Roth;
4. Exhibit 4: Expert Report of Dr. Terry Kupers, MD, MS;
5. Exhibit 5: Expert Report of Dr. Marc Stern, MD, MPH;
6. Exhibit 6: Expert Report of Eldon Vail;
7. Exhibit 7: Excerpts from the Deposition of Matthew Naidow;
8. Exhibit 8: Administrative Meeting Minutes of EMCF Staff, September 23, 2013;
9. Exhibit 9: AG_014101, Email from Tony Compton to Emmitt Sparkman, Sept. 13, 2012;
10. Exhibit 10: AG_013620, Email from Emmitt Sparkman to Michael White and Tony Compton, Jan. 24, 2013;

11. Exhibit 11: MTC_ESI_0000173, Email from Christopher Epps to Odie Washington, RS Marquardt, and Harold Pizzetta, June 16, 2014;
12. Exhibit 12: Ex. X, MTC_ESI_000014, Email from Archie Longley to Jerry Buscher, Apr. 17, 2014;
13. Exhibit 13: AG_008977, Email from Tyeasa Evans to Tony Compton, Aug. 1, 2012;
14. Exhibit 14: AG_010058, Email from Tyeasa Evans to Federico Ovalle, Aug. 16, 2012;
15. Exhibit 15: Ex. X, AG_013525, Email from Federico Ovalle to Tyeasa Evans and Jerry Buscher, Sept. 3, 2013;
16. Exhibit 16: MTC_ESI_0000255, Memo from Mike Rice to Jerry Buscher, Aug. 20, 2013;
17. Exhibit 17: AG_013795, Email from Archie Longley to Tony Compton, July 31, 2013;
18. Exhibit 18: MTC_ESI_0000268, Email from Tyeasa Evans to Jerry Buscher, June 12, 2014;
19. Exhibit 19: MTC_ESI_0000010, Email from Archie Longley to Tyeasa Evans, Oct. 14, 2013;
20. Exhibit 20: MTC_ESI_0000353, Email from Tony Compton to Jerry Buscher, May 4, 2014;
21. Exhibit 21: X, MTC_ESI_0000656, Email from Warden Frank Shaw to Tyeasa Evans, Apr. 4, 2013;
22. Exhibit 22: MTC_ESI_0000397, Email from Warden Frank Shaw to Tony Compton, Oct. 7, 2012;
23. Exhibit 23: MTC_ESI_0000076, Memorandum from Tyeasa Evans to Tony Compton, May 2, 2014;
24. Exhibit 24: U.S. Department of Labor, OSHA, Citation and Notice of Penalty, June 11, 2012;
25. Exhibit 25: MTC_ESI_000764, Email from Jerry Buscher to Archie Longley, Tyeasa Evans, and Tony Compton, June 17, 2014;
26. Exhibit 26: MTC_ESI_0000762, Email from Jerry Buscher to Tony Compton, June 19, 2014;

27. Exhibit 27: MTC_ESI_0000285, Email from Tyeasa Evans to Norris Hogans, June 23, 2014;
28. Exhibit 28: MDOC 19-01-01, Offender Segregation Policy;
29. Exhibit 29: MTC_ESI_0055395, MTC Log Book;
30. Exhibit 30: Expert Report of Madeleine LaMarre, MN, FNP-BC;
31. Exhibit 31: DEF-00111, Chemical Agents and Decontamination PowerPoint Slides;
32. Exhibit 32: AC_013645, Email from Tyeasa Evans to Frank Shaw and Federico Ovalle, Sept. 20, 2012;
33. Exhibit 33: DEF-00010, MDOC 16-13-01, Use of Force Policy;
34. Exhibit 34: MTC_ESI_0004222, Inmate Receipt, MDOC Administrative Remedy Program, Apr. 11, 2013;
35. Exhibit 35: Expert Report of Dr. Bart Abplanalp;
36. Exhibit 36: MTC_ESI_0000389, Email from Tony Compton to Tyeasa Evans and Chandra Berryman-Willis, June 24, 2014;
37. Exhibit 37: Ophthalmology Technician Service Agreement, Sept. 1, 2013;
38. Exhibit 38: MTC_ESI_0000283, Email from Tyeasa Evans to Norris Hogans June 23, 2014;
39. Exhibit 39: HALLC Chronic Care Policy;
40. Exhibit 40: Order Approving Settlement, *DePriest v. Epps*, No. 3:10-cv-00663 (S.D. Miss. March 26, 2012);
41. Exhibit 41: HALLC_ESI_0000676, Email from Carl Reddix to Stan Flint, June 14, 2012;
42. Exhibit 42: Madeleine LaMarre, MN, FNP-BC, East Mississippi Correctional Facility (EMCF) Report, Feb. 25, 2011;
43. Exhibit 43: HALLC Medical Services Contract, July 19, 2012;
44. Exhibit 44: HALLC EMCF Mortality/Death Review, Dec. 23, 2013;
45. Exhibit 45: Expert Report of Diane Skipworth;

46. Exhibit 46: AG_008915, Email from Tyeasa Evans to Michael White, June 20, 2013;
47. Exhibit 47: AG_014096, Email from Tony Compton to Federico Ovalle, Sept. 20, 2012;
48. Exhibit 48: AG_008991, Email from Tyeasa Evans to Frank Shaw, Oct. 11, 2012;
49. Exhibit 49: MTC_ESI_0000173, Email from Christopher Epps to Odie Washington, RS Marquardt, and Harold Pizzetta, June 16, 2014;
50. Exhibit 50: MTC_ESI_0000283, Email from Tyeasa Evans to Norris Hogans, June 23, 2014;
51. Exhibit 51: MTC_ESI_0000286, Email from Tony Compton to Derrick Smith and Norris Hogans, June 10, 2014;
52. Exhibit 52: MTC_ESI_0000669, Email from Frank Shaw to Tyeasa Evans, May 23, 2013;
53. Exhibit 53: MTC_ESI_0000293, Email from Tyeasa Evans to Jerry Buscher, June 2, 2014;
54. Exhibit 54: Diane Skipworth Report Addendum;
55. Exhibit 55: Defendants' Responses to Plaintiffs' First Set of Requests for Admission;
56. Exhibit 56: MTC_ESI_0000231, Email from Marjorie Brown to Archie Longley, cc: Christopher Epps, June 18, 2013;
57. Exhibit 57: Letter from Margaret Winter to Christopher Epps, May 15, 2012;
58. Exhibit 58: MTC_ESI_0000471, Email from Deputy Commissioner Archie Longley to Commissioner Christopher Epps, June 16, 2014;
59. Exhibit 59: MTC_ESI_0000287, Email from Tyeasa Evans to Norris Hogans, June 6, 2014;
60. Exhibit 60: Declaration of Isaiah Sanders, Jan. 7, 2014;
61. Exhibit 61: Declaration of Terry Pierce, Jan. 7, 2014;
62. Exhibit 62: Declaration of Demetrias Reed, Feb. 20, 2014;
63. Exhibit 63: Declaration of Leo Laurent, Mar. 20, 2014;

64. Exhibit 64: Declaration of DeAngelo Elmore, Feb. 19, 2013;
65. Exhibit 65: Declaration of Rotheleo Dixon, Feb. 19, 2013;
66. Exhibit 66: Declaration of Larry Walker, June 11, 2013;
67. Exhibit 67: Declaration of Marcus Lewis, July 1, 2014;
68. Exhibit 68: Declaration of Johnny Ailes, July 8, 2014;
69. Exhibit 69: Declaration of Jermaine Dockery, Mar. 29, 2014;
70. Exhibit 70: Declaration of Jeffery Covington, Sept. 10, 2014;
71. Exhibit 71: Declaration of Joseph Osborne, Sept. 11, 2014;
72. Exhibit 72: Declaration of Phillip Fredenburg, Sept. 11, 2014;
73. Exhibit 73: Declaration of John Barrett, Sept. 11, 2014;
74. Exhibit 74: Declaration of Derrick Hayes, Sept. 10, 2014;
75. Exhibit 75: Declaration of Alvin Lockett, Sept. 11, 2014;
76. Exhibit 76: Declaration of James Vann, Sept. 11, 2014;
77. Exhibit 77: Declaration of Margaret Winter, Sept. 24, 2014;
78. Exhibit 78: Declaration of Jody E. Owens, II, Sept. 25, 2014;
79. Exhibit 79: Declaration of Elizabeth Alexander, Sept. 24, 2014;
80. Exhibit 80: Declaration of Mari K. Bonthuis, Sept. 24, 2014; and
81. Exhibit 81: AG_013406, Email from Tyeasa Evans to Frank Shaw, Aug. 13, 2012

RESPECTFULLY SUBMITTED, this 25th day of September, 2014.

Of Counsel:

/s/ Mari K. Bonthuis

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