

IN THE UNITED STATES DISTRICT  
COURT SOUTHERN DISTRICT OF  
STATESBORO DIVISION

<b>DARIUS ISHUN GREEN</b>	)	
	)	
Plaintiff,	)	CAFN: <b>CV 614-103</b>
v.	)	
	)	
<b>CHARLES CALHOUN</b>	)	
<b>BRAD WESTBERRY</b>	)	
<b>JOHN JORDAN</b>	)	
<b>WAYNE COOK</b>	)	
<b>CHRISTOPHER GAY</b>	)	
<b>MARK SMITH</b>	)	
<b>TERRY CALHOUN</b>	)	
<b>JERMAINE CALHOUN</b>	)	
<b>CYNTHIA CALHOUN</b>	)	
<b>JETTIE CALHOUN</b>	)	
<b>SHAWN CALHOUN</b>	)	
<b>BENJAMIN MOURAD</b>	)	
<b>BASAHAN MCINTOSH</b>	)	
	)	
	)	
	)	
	)	<b><u>JURY TRIAL DEMANDED</u></b>
Defendants.	)	

**COMPLAINT**

Plaintiff (“Green”) files this Complaint for all permissible damages, by using 42 §§ 1983 and 1988 as vehicles to vindicate Green’s rights under the Eighth Amendment and Fourth Amendment of the U.S. Constitution, because Defendants violated Green’s constitutional right to be free from cruel and unusual punishment.

To support this Complaint, Green alleges the following:

### **PRELIMINARY STATEMENT**

Based on new knowledge, Green files this Complaint, which related to 6:14-cv-46-BAE-GRS. On September 21, 2012, at the same time (4:30 a.m.), Torie Grubbs (a Defendant in 6:14-cv-46-BAE-GRS) admitted both Plaintiff and Darryl Ricard (Plaintiff's assailant) into protective custody, and when Green arrived to Green's protective custody cell, Ricard was waiting. Ricard raped Green, and the Defendants to this action all knew Ricard was going to rape (or at the very least, sexually assault) Green yet permitted Ricard to sexually assault Green.

### **JURISDICTION**

1.

Jurisdiction is proper and based upon 28 U.S.C. §§ 1331, 1332, and 1343.

### **VENUE**

2.

Venue is proper and based upon 28 U.S.C. § 1391. Also, the events or omissions related to Green's claims arose in Tattnall County, GA at Rogers State Prison. See L.R. 3.4.

### **PARTIES**

3.

At all times relevant to this Complaint, Green was a citizen of the United States, residing in Georgia. Green submits to the jurisdiction and venue of this Court; thus Green files this action under federal law for all general, special, compensatory, punitive, and any other permissible damages.

## **A. Defendants**

4.

Lieutenant Bashan McIntosh (“McIntosh”) at all times relevant to this action was a correctional officer at Rogers State Prison who was also employed by GDC. While Green was in protective custody (“PC”), from September 21-22, 2012, McIntosh was on duty. During that time, McIntosh saw Ricard (Green’s assailant) in Green’s PC cell and knew Ricard was not supposed to be in Green’s cell. McIntosh also knew, at the time he saw Ricard in Green’s cell and knew Ricard was not supposed to be there, that Ricard was a gang member and convicted rapist, child molester. McIntosh knew Ricard would sexually assault Green and condoned that eventual sexual assault by permitting Ricard to be in Green’s PC cell where McIntosh knew Ricard was not supposed to be.

At all times relevant to this Complaint, McIntosh was acting under color of law, and was responsible for knowing all relevant policies, procedures, rules, regulations of the DOC with respect to transgender inmates and vulnerable inmates, and McIntosh was also responsible for knowing all precedential law of the Eleventh Circuit Court of Appeals and the U.S. Supreme Court, as that law applies to the U.S Constitution with respect to transgender and vulnerable inmates. McIntosh is being sued in his individual capacity and may be served at 1978 GA HWY 147, Reidsville, GA 30453.

5.

Brad Westberry (“Westberry”) at all times relevant to this action was a correctional officer at Rogers State Prison who was also employed by GDC. While Green was in protective custody (“PC”), from September 21-22, 2012, Westberry was performing security checks on and near Green’s PC cell. During that time, Westberry saw Ricard (Green’s assailant) in Green’s PC cell and knew Ricard was not supposed to be in Green’s cell. Westberry also knew, at the time he saw Ricard in Green’s PC cell and knew Ricard was not supposed to be there, that Ricard was a gang member and convicted rapist, child molester. Westberry knew Ricard would sexually assault Green and condoned that eventual sexual assault by permitting Ricard to be in Green’s PC cell where Westberry knew Ricard was not supposed to be.

At all times relevant to this Complaint, Westberry was acting under color of law, and was responsible for knowing all relevant policies, procedures, rules, regulations of the DOC with respect to transgender inmates and vulnerable inmates, and Westberry was also responsible for knowing all precedential law of the Eleventh Circuit Court of Appeal and the U.S. Supreme Court, as it applies to the U.S. Constitution with respect to transgender inmates. Westberry is being sued in his individual capacity and may be served at 1978 GA HWY 147, Reidsville, GA 30453.

6.

Benjamin Mourad (“Mourad”) at all times relevant to this action was a correctional officer at Rogers State Prison who was also employed by GDC. While Green was in protective custody (“PC”), from September 21-22, 2012,

Mourad was performing security checks on and near Green's PC cell. During that time, Mourad saw Ricard (Green's assailant) in Green's PC cell and knew Ricard was not supposed to be in Green's cell. Mourad also knew, at the time he saw Ricard in Green's PC cell and knew Ricard was not supposed to be there, that Ricard was a gang member and convicted rapist, child molester. Mourad knew Ricard would sexually assault Green and condoned that eventual sexual assault by permitting Ricard to be in Green's PC cell where Mourad knew Ricard was not supposed to be.

At all relevant to this Complaint, Mourad was acting under color of law, and was responsible for knowing all relevant policies, procedures, rules, regulations of the DOC with respect to transgender inmates and vulnerable inmates, and Mourad was also responsible for knowing all precedential law of the Eleventh Circuit Court of Appeals and the U.S. Supreme Court, as that law applies to the U.S Constitution with respect to transgender and vulnerable inmates. Mourad is being sued in his individual capacity and may be served at 1978 GA HWY 147, Reidsville, GA 30453.

7.

Charles Calhoun at all times relevant to this action was a correctional officer at Rogers State Prison who was also employed by GDC. While Green was in protective custody ("PC"), from September 21-22, 2012, Charles Calhoun was performing security checks on and near Green's PC cell. During that time, Charles Calhoun saw Ricard (Green's assailant) in Green's PC cell and knew Ricard was not supposed to be in Green's cell. Charles Calhoun also knew, at the time he saw Ricard in Green's cell and knew Ricard was not supposed to be

there, that Ricard was a gang member and convicted rapist, child molester. Charles Calhoun knew Ricard would sexually assault Green and condoned that eventual sexual assault by permitting Ricard to be in Green's PC cell where Charles Calhoun knew Ricard was not supposed to be.

At all relevant to this Complaint, Charles Calhoun was acting under color of law, and was responsible for knowing all relevant policies, procedures, rules, regulations of the DOC with respect to transgender inmates and vulnerable inmates, and Charles Calhoun was also responsible for knowing all precedential law of the Eleventh Circuit Court of Appeals and the U.S. Supreme Court, as that law applies to the U.S Constitution with respect to transgender and vulnerable inmates. Charles Calhoun is being sued in his individual capacity and may be served at 1978 GA HWY 147, Reidsville, GA 30453.

8.

Terry Calhoun at all times relevant to this action was a correctional officer at Rogers State Prison who was also employed by GDC. While Green was in protective custody ("PC"), from September 21-22, 2012, Terry Calhoun was performing security checks on and near Green's PC cell. During that time, Terry Calhoun saw Ricard (Green's assailant) in Green's PC cell and knew Ricard was not supposed to be in Green's cell. Terry Calhoun also knew, at the time he saw Ricard in Green's cell and knew Ricard was not supposed to be there, that Ricard was a gang member and convicted rapist, child molester. Terry Calhoun knew Ricard would sexually assault Green and condoned that eventual sexual assault by permitting Ricard to be in Green's PC cell where Terry Calhoun knew Ricard was not supposed to be.

At all relevant to this Complaint, Terry Calhoun was acting under color of law, and was responsible for knowing all relevant policies, procedures, rules, regulations of the DOC with respect to transgender inmates and vulnerable inmates, and Terry Calhoun was also responsible for knowing all precedential law of the Eleventh Circuit Court of Appeals and the U.S. Supreme Court, as that law applies to the U.S Constitution with respect to transgender and vulnerable inmates. Terry Calhoun is being sued in his individual capacity and may be served at 1978 GA HWY 147, Reidsville, GA 30453.

9.

Jermaine Calhoun at all times relevant to this action was a correctional officer at Rogers State Prison who was also employed by GDC. While Green was in protective custody (“PC”), from September 21-22, 2012, Jermaine Calhoun was performing security checks on and near Green’s PC cell. During that time, Jermaine Calhoun saw Ricard (Green’s assailant) in Green’s PC cell and knew Ricard was not supposed to be in Green’s cell. Jermaine Calhoun also knew, at the time he saw Ricard in Green’s cell and knew Ricard was not supposed to be there, that Ricard was a gang member and convicted rapist, child molester. Jermaine Calhoun knew Ricard would sexually assault Green and condoned that eventual sexual assault by permitting Ricard to be in Green’s PC cell where Jermaine Calhoun knew Ricard was not supposed to be.

At all relevant to this Complaint, Jermaine Calhoun was acting under color of law, and was responsible for knowing all relevant policies, procedures, rules, regulations of the DOC with respect to transgender inmates and vulnerable inmates, and Jermaine Calhoun was also responsible for knowing all precedential

law of the Eleventh Circuit Court of Appeals and the U.S. Supreme Court, as that law applies to the U.S Constitution with respect to transgender and vulnerable inmates. Jermaine Calhoun is being sued in his individual capacity and may be served at 1978 GA HWY 147, Reidsville, GA 30453.

10.

Cynthia Calhoun at all times relevant to this action was a correctional officer at Rogers State Prison who was also employed by GDC. While Green was in protective custody (“PC”), from September 21-22, 2012, Cynthia Calhoun was performing security checks on and near Green’s PC cell. Cynthia Calhoun saw Ricard (Green’s assailant) in Green’s PC cell and knew Ricard was not supposed to be in Green’s cell. Cynthia Calhoun also knew, at the time he saw Ricard in Green’s cell and knew Ricard was not supposed to be there, that Ricard was a gang member and convicted rapist, child molester. Cynthia Calhoun knew Ricard would sexually assault Green and condoned that eventual sexual assault by permitting Ricard to be in Green’s PC cell where Cynthia Calhoun knew Ricard was not supposed to be.

At all relevant to this Complaint, Cynthia Calhoun was acting under color of law, and was responsible for knowing all relevant policies, procedures, rules, regulations of the DOC with respect to transgender inmates and vulnerable inmates, and Cynthia Calhoun was also responsible for knowing all precedential law of the Eleventh Circuit Court of Appeals and the U.S. Supreme Court, as that law applies to the U.S Constitution with respect to transgender and vulnerable inmates. Cynthia Calhoun is being sued in his individual capacity and may be served at 1978 GA HWY 147, Reidsville, GA 30453.

11.

Shawn Calhoun at all times relevant to this action was a correctional officer at Rogers State Prison who was also employed by GDC. While Green was in protective custody (“PC”), from September 21-22, 2012, Shawn Calhoun was performing security checks on and near Green’s PC cell. During that time, Shawn Calhoun saw Ricard (Green’s assailant) in Green’s PC cell and knew Ricard was not supposed to be in Green’s cell. Shawn Calhoun also knew, at the time he saw Ricard in Green’s cell and knew Ricard was not supposed to be there, that Ricard was a gang member and convicted rapist, child molester. Shawn Calhoun knew Ricard would sexually assault Green and condoned that eventual sexual assault by permitting Ricard to be in Green’s PC cell where Shawn Calhoun knew Ricard was not supposed to be.

At all relevant to this Complaint, Shawn Calhoun was acting under color of law, and was responsible for knowing all relevant policies, procedures, rules, regulations of the DOC with respect to transgender inmates and vulnerable inmates, and Shawn Calhoun was also responsible for knowing all precedential law of the Eleventh Circuit Court of Appeals and the U.S. Supreme Court, as that law applies to the U.S Constitution with respect to transgender and vulnerable inmates. Shawn Calhoun is being sued in his individual capacity and may be served at 1978 GA HWY 147, Reidsville, GA 30453.

12.

Jettie Calhoun at all times relevant to this action was a correctional officer at Rogers State Prison who was also employed by GDC. While Green was in protective custody (“PC”), from September 21-22, 2012, Jettie Calhoun was performing security checks on and near Green’s PC cell. During that time, Jettie Calhoun saw Ricard (Green’s assailant) in Green’s PC cell and knew Ricard was not supposed to be in Green’s cell. Jettie Calhoun also knew, at the time he saw Ricard in Green’s cell and knew Ricard was not supposed to be there, that Ricard was a gang member and convicted rapist, child molester. Jettie Calhoun knew Ricard would sexually assault Green and condoned that eventual sexual assault by permitting Ricard to be in Green’s PC cell where Jettie Calhoun knew Ricard was not supposed to be.

At all relevant to this Complaint, Jettie Calhoun was acting under color of law, and was responsible for knowing all relevant policies, procedures, rules, regulations of the DOC with respect to transgender inmates and vulnerable inmates, and Jettie Calhoun was also responsible for knowing all precedential law of the Eleventh Circuit Court of Appeals and the U.S. Supreme Court, as that law applies to the U.S Constitution with respect to transgender and vulnerable inmates. Jettie Calhoun is being sued in his individual capacity and may be served at 1978 GA HWY 147, Reidsville, GA 30453.

13.

John Jordan (“Jordan”) at all times relevant to this action was a correctional officer at Rogers State Prison who was also employed by GDC. While Green was in protective custody (“PC”), from September 21-22, 2012, Jordan had

supervisory authority over personnel that were performing security checks on and near Green's PC cell. During that time, Jordan saw Ricard (Green's assailant) in Green's PC cell and knew Ricard was not supposed to be in Green's cell. Jordan also knew, at the time he saw Ricard in Green's cell and knew Ricard was not supposed to be there, that Ricard was a gang member and convicted rapist, child molester. Jordan knew Ricard would sexually assault Green and condoned that eventual sexual assault by permitting Ricard to be in Green's PC cell where Jordan knew Ricard was not supposed to be. Jordan agreed with his subordinates to permit Ricard to be in Green's cell where all Defendants knew Ricard was not supposed to be.

At all relevant to this Complaint, Jordan was acting under color of law, and was responsible for knowing all relevant policies, procedures, rules, regulations of the DOC with respect to transgender inmates and vulnerable inmates, and Jordan was also responsible for knowing all precedential law of the Eleventh Circuit Court of Appeals and the U.S. Supreme Court, as that law applies to the U.S Constitution with respect to transgender and vulnerable inmates. Jordan is being sued in his individual capacity and may be served at 1978 GA HWY 147, Reidsville, GA 30453.

14.

Wayne Cook ("Cook") at all times relevant to this action was a correctional officer at Rogers State Prison who was also employed by GDC. While Green was in protective custody ("PC"), from September 21-22, 2012, Cook had supervisory authority over personnel that were performing security checks on and near Green's PC cell. During that time, Cook saw Ricard (Green's assailant)

in Green's PC cell and knew Ricard was not supposed to be in Green's cell. Cook also knew, at the time he saw Ricard in Green's cell and knew Ricard was not supposed to be there, that Ricard was a gang member and convicted rapist, child molester. Cook knew Ricard would sexually assault Green and condoned that eventual sexual assault by permitting Ricard to be in Green's PC cell where Jordan knew Ricard was not supposed to be. Cook agreed with his subordinates to permit Ricard to be in Green's cell where all Defendants knew Ricard was not supposed to be, and all Defendants knew Ricard would sexually assault Green.

At all relevant to this Complaint, Cook was acting under color of law, and was responsible for knowing all relevant policies, procedures, rules, regulations of the DOC with respect to transgender inmates and vulnerable inmates, and Cook was also responsible for knowing all precedential law of the Eleventh Circuit Court of Appeals and the U.S. Supreme Court, as that law applies to the U.S Constitution with respect to transgender and vulnerable inmates. Cook is being sued in his individual capacity and may be served at 1978 GA HWY 147, Reidsville, GA 30453.

15.

Christopher Gay ("Gay") at all times relevant to this action was a correctional officer at Rogers State Prison who was also employed by GDC. While Green was in protective custody ("PC"), from September 21-22, 2012, Gay had supervisory authority over personnel that were performing security checks on and near Green's PC cell. During that time, Gay saw Ricard (Green's assailant) in Green's PC cell and knew Ricard was not supposed to be in Green's cell. Gay also knew, at the time he saw Ricard in Green's cell and knew Ricard was not

supposed to be there, that Ricard was a gang member and convicted rapist, child molester. Gay knew Ricard would sexually assault Green and condoned that eventual sexual assault by permitting Ricard to be in Green's PC cell where Jordan knew Ricard was not supposed to be. Gay agreed with his subordinates to permit Ricard to be in Green's cell where all Defendants knew Ricard was not supposed to be, and all Defendants knew Ricard would sexually assault Green.

At all relevant to this Complaint, Gay was acting under color of law, and was responsible for knowing all relevant policies, procedures, rules, regulations of the DOC with respect to transgender inmates and vulnerable inmates, and Gay was also responsible for knowing all precedential law of the Eleventh Circuit Court of Appeals and the U.S. Supreme Court, as that law applies to the U.S. Constitution with respect to transgender and vulnerable inmates. Gay is being sued in his individual capacity and may be served at 1978 GA HWY 147, Reidsville, GA 30453.

16.

Mark Smith ("Smith") at all times relevant to this action was a correctional officer at Rogers State Prison who was also employed by GDC. While Green was in protective custody ("PC"), from September 21-22, 2012, Smith had supervisory authority over personnel that were performing security checks on and near Green's PC cell. During that time, Smith saw Ricard (Green's assailant) in Green's PC cell and knew Ricard was not supposed to be in Green's cell. Smith also knew, at the time he saw Ricard in Green's cell and knew Ricard was not supposed to be there, that Ricard was a gang member and convicted rapist, child molester. Smith knew Ricard would sexually assault

Green and condoned that eventual sexual assault by permitting Ricard to be in Green's PC cell where Jordan knew Ricard was not supposed to be. Smith agreed with his subordinates to permit Ricard to be in Green's cell where all Defendants knew Ricard was not supposed to be, and all Defendants knew Ricard would sexually assault Green.

At all relevant to this Complaint, Smith was acting under color of law, and was responsible for knowing all relevant policies, procedures, rules, regulations of the DOC with respect to transgender inmates and vulnerable inmates, and Smith was also responsible for knowing all precedential law of the Eleventh Circuit Court of Appeals and the U.S. Supreme Court, as that law applies to the U.S Constitution with respect to transgender and vulnerable inmates. Smith is being sued in his individual capacity and may be served at 1978 GA HWY 147, Reidsville, GA 30453.

### **RELEVANT FACTS**

17.

Upon arrival at Rogers State Prison, and before Green was placed in general population, each Defendants named in this action knew Green was transgender.

18.

Before Green was placed in general population at Rogers State Prison, Each Defendants knew Green had female body parts such as breast.

19.

Before Green was placed in general population at Rogers State Prison, each Defendants knew Green was transgender.

20.

At all relevant times to this Complaint, each Defendant knew that Rogers State Prison housed closed security inmates.

21

At all relevant times to this Complaint, each Defendant knew Rogers State prison housed convicted rapist in general population.

22.

At all relevant times to this Complaint, each Defendants knew Rogers State Prison housed convicted murderers in general population.

23

At all relevant times to this Complaint, each Defendant knew Rogers State Prison housed sexual offenders.

24.

At all relevant times to this Complaint, each Defendant knew Rogers State Prison housed convicted murderers and inmates convicted of felony crimes such aggravated battery and aggravated assault.

25.

Each Defendant saw Ricard in Green's protective custody cell and permitted Ricard to stay in Green's protective custody cell while knowing that Ricard would sexually assault Green or at the very least attempt to sexually assault Green.

26.

At the time that each Defendant saw Ricard in Green's protective custody cell, each Defendant knew that Ricard was a convicted rapist.

27.

At the time that each Defendant saw Ricard in Green's protective custody cell, each Defendant knew that Ricard was not authorized to be in Green's cell.

28.

During the time that Ricard was in Green's protective custody cell, from September 21 2012, each knew Ricard was a convicted rapist.

29.

During the time that Ricard was in protective custody cell, from September 21 2012, each knew Ricard had a higher security classification than Green minimum security classification.

30.

During the time that Ricard protective custody cell, from September 21 2012, each knew Ricard was a convicted rapist.

31.

Defendant Jordan agreed with all other Defendants (including his subordinates), and also with Torie Grubbs, to permit Ricard to be housed in Green's protective custody cell while knowing Ricard was not authorized to be in Green's cell.

32.

Defendant Cook as a supervisor agreed with all other Defendants (including his subordinates), and also with Torie Grubbs, to permit Ricard to be housed in Green's protective custody cell while knowing Ricard was not authorized to be in Green's cell.

33.

Defendant Gay as a supervisor agreed with all other Defendants (including his subordinates), and also with Torie Grubbs, to permit Ricard to be housed in Green's protective custody cell while knowing Ricard was not authorized to be in Green's cell.

34.

Defendants Smith as a supervisor agreed with all other Defendants (including his subordinates), and also with Torie Grubbs, to permit Ricard to be housed in Green's protective custody cell while knowing Ricard was not authorized to be in Green's cell.

35.

Defendants McIntosh as a supervisor agreed with all other Defendants (including his subordinates), and also with Torie Grubbs, to permit Ricard to be housed in Green's protective custody cell while knowing Ricard was not authorized to be in Green's cell.

36.

From the time Green was placed in protective custody at Rogers State Prison on September 21, 2012 until Approximately 4 a.m. on September 22, 2012, no defendant took any action to remove Ricard from Green's cell, while

all Defendants knew Ricard was not authorized to be in Green's cell.

37.

Each Defendant knew that Green was not authorized to be in Green's subject protective custody cell.

38.

Each Defendant knew, during the time that Green was in PC from September 21-22, that Green was transgender/transsexual.

39.

Each Defendant knew, during the time that Green was in PC from September 21-22, that Green had breast.

40.

Each Defendant knew, during the time that Green was in PC from September 21-22, that the reason Green had been placed in protective custody is because Green alleged fear for life.

### **COUNT I**

### **VIOLATION OF EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND 42 U.S.C. § 1983** *(Against All Defendants)*

41.

Green re-alleges in this Count, as if stated verbatim, all factual allegations in ¶¶ 4-40, and any other paragraph this Court deems applicable. Also, every fact and allegation in this Count supports Green's allegation that before and during various times Green was sexually assaulted, Green had a clearly

established constitutional right to be free from cruel and unusual punishment in the form of Defendants deliberately ignoring the concrete and *known risk* of the very physical injuries Green suffered, as well as Defendants ignoring the known physical injuries Green indeed did suffer.

42.

*Based on the incorporated facts in this Count*, Defendants, acting under the color of state law, violated Green's rights under the Eighth and Fourteenth Amendments to the United States Constitution by condoning and promoting unsafe prison conditions, evidenced by Defendants permitting Ricard to be in Green's cell while knowing Ricard was not authorized to be in said cell and while knowing Ricard would do what he did do: sexually assault Green. Defendant knowingly placed Green, who Defendants knew was known to place transgender at all relevant time, in substantial risk of physical injury. Defendant conduct demonstrated deliberate indifference to actual physical injuries to physical and emotional injuries Green suffered in fact and thus Defendants are liable to Green for creating an environment that led to her actually being anally raped and otherwise sexually assaulted.

43.

Defendants' conduct directly and proximately caused Green to suffer significant physical and emotional injuries in an amount to be proven at trial.

44.

Defendants' conduct was objectively unreasonable; that same conduct was willful, carefree disregard for Green's constitutional right to be free from cruel and unusual punishment. Consequently, Green is entitled to all permissible damages, including punitive damages. Punitive damages are *essential* to deter future Eighth Amendment violations against transgender human beings within the GDC.

## **COUNT II**

### **SUPERVISORY LIABILITY**

*(Against Defendants Jordan, Cook, Gay, Smith and McIntosh)*

"Supervisory liability under 42 U.S.C. § 1983 occurs when the supervisor personally participates in the alleged constitutional violation or when there is a causal connection between the actions of the supervising official and the alleged constitutional deprivation." Matthews *supra*, at 1269- 70. The acts and omissions of all Defendants named in this Count proximately caused the deprivation of Green's clearly established constitutional right to be free from cruel and unusual punishment in the form of, inter alia, being beaten while handcuffed and non-

resisting.

45.

Green re-alleges in this Count, as if fully stated verbatim, all factual allegations set forth in ¶¶ 4-44, and any other paragraph that this Court deems applicable.

46.

*Based on the facts incorporated to his Count,* Defendants named in this Count are potentially liable under this Count because they directly participated in the alleged constitutional violation by seeing Ricard in Green's PC cell and doing nothing to remove Ricard from Green's cell at all relevant times—while knowing Ricard would do exactly what he did do: sexually assault Green. These Defendants had the supervisory authority to prevent Green from being placed in a “protective-custody” cell with her sexual assailant and did nothing to stop Ricard from being in the same cell with Green at all relevant times to this Complaint.

**COUNT III**

**CIVIL CONSPIRACY**  
*(Against Defendants All Defendants)*

To state a plausible claim for civil conspiracy under 42 U.S.C. § 1983, a plaintiff must plead sufficient facts to reasonably infer that a Defendant reached an understanding with another person to violate the plaintiff's constitutional rights; the conspiratorial act must also "impinge" upon the plaintiff's constitutional right. See Grider v. City of Auburn, Ala., 618 F 3d 1240, 1260 (11th Cir. 2010).

Significantly, Plaintiffs can prove civil conspiracy with circumstantial evidence.

Id.

47.

Green re-alleges in this Count, as if fully stated verbatim, all factual allegations set forth in ¶¶ 4-44, and any other paragraph that this Court deems applicable.

48.

***Based on the incorporated facts into this Count***, these Defendants conspired with Torie Grubbs (a defendant in another lawsuit arising out of the same facts and circumstances) to violate Green's constitutional rights. There is simply no way that all Defendants could perform security check and see Ricard in Green cell, while knowing Ricard was not authorized to be there, and not

have conspired to permit Ricard to stay in Green's cell. Defendants' actions are gross and unconstitutional. Grubbs conspired with Green's sexual assailant and Hon Doe to have Green placed in a cell with the person both Grubbs and John Doe knew had sexually assaulted Green and knew would sexually assault Green again once Green was left in the "protective custody" cell alone with said sexual assailant. Grubbs spoke to the assailant just prior to having Green transported to the subject cell where Green's sexual assailant was waiting inside. Grubbs conduct was a shameless, depraved heart act, showing a callous disregard for the U.S Constitution and human dignity.

49.

Defendants' conspiratorial conduct caused Green immense pain and suffering and as such, Green is entitled to all permissible damages under law.

#### **COUNT IV**

#### **FAILURE TO INTERVENE**

50.

Green re-alleges in this Count, as if fully stated verbatim, all factual allegations set forth in ¶¶ 4-49, and any other paragraph that this Court deems applicable.

51.

*Based on the incorporated facts into this Court*, Defendants failed to intervene to stop a constitutional violation that Defendants knew was occurring and going to occur. As such, Green is entitled to all damages allowed under applicable law and rules.

**PUNITIVE DAMAGES AND ATTORNEY FEES**

Defendants' conduct entitles Green to an award of punitive damage. Green also request reasonable attorney fees under all applicable laws.

Green now prays that this Court do the following:

1. Assume jurisdiction over this action;
2. Declare that the acts and omissions described in this Complaint violated Green's clearly-established rights under the U.S. Constitution and laws of the United States;
3. Permit a jury of at least six (6) to decide all issues of fact that this Court does not decide as a matter of law;
4. Enter judgment in favor of Green- for all permissible damages under law, including compensatory and punitive damages- against each defendant jointly and severally;
5. Award Green all permissible costs under law regarding this lawsuit, including reasonable attorney fees and expenses pursuant to 42 U.S.C.

§ 1988(b) & (c); and

- Order any additional relief that this Court deems appropriate.

Respectfully submitted this 19<sup>th</sup> day of September 2014,

s/MARIO WILLIAMS  
Mario Williams  
GA Bar No. 235254WILLIAMS  
OINONEN, LLC

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