

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION

**FILED**  
JUN 22 2005  
ARLEN B. COYLE, CLERK  
BY *[Signature]* Deputy

JEFFERY PRESLEY, DENNIS BRUMFIELD, STEVEN  
FARRIS and MARCUS D. WILLIAMS, on their own behalf  
and on behalf of those similarly situated,

Plaintiffs,

4:05CV148-M-B

v.

CHRISTOPHER EPPS, Commissioner, Mississippi Department  
of Corrections; EMMITT SPARKMAN, Deputy Commissioner,  
Mississippi Department of Corrections; LAWRENCE KELLY,  
Superintendent, Mississippi State Penitentiary; ERNEST LEE,  
Area III Warden, Mississippi State Penitentiary; KENTRELL  
LIDDELL, M.D., Medical Director, Mississippi Department  
of Corrections; CORRECTIONAL MEDICAL SERVICES (CMS),  
INC.; LARRY LINTON, Regional Vice President, CMS, Inc.;  
KEITH IVENS, M.D., Regional Medical Director, CMS, Inc.;  
FRED KLOPFER, M.D., Regional Mental Health Director,  
CMS, Inc.; WILLIAM STEIGER, Health Services Administrator,  
CMS-Parchman; JOHN BEARRY, M.D., Medical Director,  
CMS-Parchman; GAIL WILLIAMS, M.D., Chief Psychiatrist,  
CMS-Parchman,

Defendants.

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**COMPLAINT**

**Preliminary Statement**

1. This class action is brought by prisoners confined in Unit 32 of Mississippi State Penitentiary in Parchman, Mississippi. A supermaximum security facility, Unit 32 is a massive complex of five buildings housing about 1000 men, almost all of them in segregation cells where

they are locked down 23 to 24 hours a day, in total isolation. The conditions of confinement in Unit 32 are so barbaric, the deprivation of medical and mental health care so extreme, and the defects in security so severe, that the lives and health of the men confined there – and the correctional staff who work there – are at great and imminent risk.

2. Although Mississippi prison officials claim that they use Unit 32 to incarcerate the most dangerous and incorrigible offenders in the State, in the most secure and restrictive setting possible, the reality is quite different. The majority of the men housed in Unit 32 – for years, sometimes for decades – do not have the kind of criminal history or institutional conduct that justifies incarceration under “supermax” conditions. Many prisoners were placed in Unit 32 for purely arbitrary reasons, or for no discernible reason at all, and have never had a meaningful opportunity to contest their placement there. Many are confined there because they are HIV-positive, have special medical needs, are severely mentally ill, or have requested protective custody. Even for those men whose history might warrant the most highly restrictive custody, there is no justification whatsoever for the horrifically brutal and dangerous conditions to which they are knowingly subjected by Defendant prison officials and their medical services contractors.

3. These conditions include profound isolation and unrelieved idleness; pervasive filth and stench; malfunctioning plumbing and constant exposure to human excrement; lethal extremes of heat and humidity; uncontrolled infestations of mosquitoes, spiders, horseflies and other insects; grossly inadequate medical, mental health and dental care; the routine use by security staff of excessive force; and the constant pandemonium, night and day, of severely mentally ill prisoners screaming, raving and hallucinating in nearby cells. Security staffing in Unit 32 is so dangerously inadequate and incompetent that prison gang leaders, housed in other areas of Mississippi State

Penitentiary but assigned to work in Unit 32, are able to freely transact their gang business and recruit corrupt corrections officers to facilitate gang-related drug transactions, prostitution rings and extortion schemes.

4. All of these conditions, separately and in combination, cause those who live in Unit 32 intense suffering, and put them at substantial risk of physical injury, illness and premature death. These conditions are likely to cause serious mental illness to emerge in previously healthy prisoners, and psychosis, mania and mental breakdown to afflict less healthy prisoners. As a result of these deprivations, Unit 32 is a tinder-box – a catastrophe waiting to happen.

#### **JURISDICTION AND VENUE**

5. This action arises under 42 U.S.C. § 1983 to redress the deprivation under color of state law of rights, privileges and immunities secured by the Constitution of the United States. The rights sought to be redressed are guaranteed by the Eighth and Fourteenth Amendments to the United States Constitution. The Court has federal question jurisdiction over this controversy under 28 U.S.C. §§ 1331 and 1343.

6. Venue is proper in the Northern District of Mississippi under 28 U.S.C. § 1391. The Plaintiffs are incarcerated there, the acts complained of occurred there, and some of the Defendants work there.

#### **PARTIES**

7. Plaintiffs Jeffery Presley, Dennis Brumfield, Steven Farris and Marcus D. Williams are prisoners in the custody of the Mississippi Department of Corrections who are currently incarcerated in Unit 32 of Mississippi State Penitentiary.

8. Defendant Christopher Epps is the Commissioner of the Mississippi Department of Corrections (MDOC). As Commissioner, Epps is responsible for MDOC's daily functioning and administration. He is sued in his official capacity.

9. Defendant Emmitt Sparkman is the Deputy Commissioner of Institutions of MDOC. As Deputy Commissioner, Sparkman is responsible, together with the Commissioner, for the daily functioning and administration of MDOC Institutions, including Mississippi State Penitentiary. He is sued in his official capacity.

10. Defendant Lawrence Kelly is the Superintendent of Mississippi State Penitentiary (MSP). As Superintendent, Kelly is responsible for the daily functioning and administration of MSP. He is sued in his official capacity.

11. Defendant Earnest Lee is the Area III Warden of MSP, over Unit 32. As Area III Warden, Lee is responsible for the daily functioning and administration of Unit 32. He is sued in his official capacity.

12. Defendant Kentrell Liddell, M.D., is the MDOC Medical Director. As Medical Director, Liddell is responsible for the administration and provision of medical, dental and mental health care services to individuals in MDOC's custody. She is also responsible for monitoring and overseeing the adequacy and quality of medical services provided by MDOC's contract health care provider, Correctional Medical Services, Inc. She is sued in her official capacity.

13. Defendant Correctional Medical Services, Inc. (CMS), is a for-profit private corporation incorporated and existing in the State of Missouri and maintaining a principal place of business at 12647 Olive Boulevard, St. Louis, Missouri 63141. CMS has contracted with MDOC to provide

medical, dental and mental health care services to prisoners in MDOC's custody at MSP and other correctional facilities throughout the State of Mississippi.

14. Defendant Larry Linton is, or was, Regional Vice President for CMS, in charge of overseeing its medical services contract with MDOC. Linton, or his successor in that position, is responsible for the overall administration of medical services to prisoners at MSP.

15. Defendant Keith Ivens, M.D., is, or was, Regional Medical Director for CMS. Ivens, or his successor in that position, is responsible for the quality and adequacy of medical services provided to prisoners at MSP.

16. Defendant Fred Klopfer, M.D., is Regional Mental Health Director for CMS. Klopfer is responsible for the quality and adequacy of mental health care services provided to prisoners at MSP.

17. Defendant William Steiger is the Health Services Administrator for CMS-Parchman. Steiger is responsible for the daily administration and functioning of the medical services unit at MSP.

18. Defendant John Bearry, M.D., is the Facility Medical Director at CMS-Parchman. Bearry is responsible for the provision of medical services to individuals incarcerated at MSP.

19. Defendant Gail Williams, M.D., is the Chief Psychiatrist at CMS-Parchman. Williams is responsible for the provision of mental health services to individuals incarcerated at MSP.

20. At all relevant times, each of the individual CMS defendants was an agent of CMS acting on behalf of CMS and within the scope of his agency.

## **CONDITIONS OF CONFINEMENT**

### **Permanent Enforced Idleness and Isolation**

21. Unit 32 prisoners live in almost total isolation from other human beings and in a state of perpetual forced idleness. The men are confined to their cells for 23 to 24 hours a day, except for

five-minute showers three times a week and sporadic access to an outdoor exercise cage scarcely larger than a cell, in which they must remain fully shackled in hand-cuffs, leg-irons and waist-chains. Defendants routinely cancel even this absurdly limited opportunity for exercise. They actively discourage prisoners from going outside by subjecting them to arbitrary strip-searches and cell shakedowns before yard-call. The vast majority of Unit 32 prisoners have no access to educational or vocational programs, prison jobs, religious services or fellowship, social interaction with other prisoners, or even such solitary pastimes as playing cards or hobby crafts. The men are permitted, at best, only two books from the library every three to four months and must wait months to exchange a single book.

22. Other than on death row, the men in Unit 32 are not permitted radios or televisions. Defendants have removed the built-in writing tables attached to the wall that were intended for writing and drawing. Reading, writing or any kind of sustained or focused thought is virtually impossible due to the constant screams, moans, curses, animal noises, maniacal laughter and hallucinatory ravings of severely mentally ill prisoners in adjacent cells, and because of the collective din of prisoners pounding on cell bars and door frames – their only means to attract the attention of corrections officers.

23. The profound and long-term isolation, idleness, monotony and lack of exercise cause severe deterioration of prisoners' mental and physical health. Those who remain in Unit 32 for any significant length of time – and many remain for years, even decades – spiral into mental illness and despair. In this weakened condition, even the most self-controlled and rational prisoners become increasingly unable to control their responses to the noxious conditions in Unit 32.

**Dangerously Deficient Security and Excessive Force**

24. Chronic and severe shortages in security staffing and Defendants' failure to adequately train and supervise security staff put the lives of prisoners and prison employees in Unit 32 in constant peril. Corrections officers do not follow basic security precautions, and because security is so lax, prisoner-on-prisoner violence is commonplace. Some corrections officers sadistically bait and threaten prisoners, or gratuitously beat prisoners already in full restraint gear. If a Unit 32 prisoner expresses suicidal thoughts or needs to be moved for other reasons, "takedown teams" of four or five officers often forcibly extract the shackled prisoner from his cell, spray him with a chemical agent that causes vomiting and shortness of breath, and then assault him.

25. Sadistic abuse and excessive force by corrections staff create a serious risk of suicide in young or mentally ill prisoners. On November 24, 2003, Christopher Smiley, a youthful prisoner on psychiatric medications, threw a glass of water at a corrections officer. The officer screamed that she was going to kill him, and a take-down team of several officers was summoned. The officers gassed Smiley and – after putting him in full restraint gear – pushed, punched and dragged him into a hallway, where they severely beat him. Smiley was taken to a holding tank and then brought back to a punishment cell on the tier, where he spent the following night without any clothing or bedding, although the temperature dropped below freezing. Officers refused to give him his psychiatric medications and denied him several meals. The following day, on November 26, an officer told him "you'd better be gone when I come to work tonight." Smiley told ranking officers about the beating and threats and begged to be moved. They told him to set a fire if he wanted to be moved. That night, Smiley was found dead in his cell, hanging in the corner near the sink. A few weeks later, on

December 16, 2003, Patrick Presley, a prisoner who was in Unit 32 simply because he needed protective custody, was found hanged in his cell.

26. Prison gang leaders housed in other Units and assigned to work in Unit 32 take advantage of the lax security to freely transact gang business on the Unit. They recruit corrections officers to act as mail couriers, supply cell phones, and otherwise facilitate gang-related drug transactions, prostitution rings and extortion schemes. Some officers leave their posts to engage in sex with gang leaders. At least one officer has allowed a gang member to rifle through a sack of outgoing prisoner mail.

27. Staff shortages, staff incompetency and staff corruption have a disastrous effect on virtually every aspect of confinement in Unit 32 and contribute significantly to prisoners' lack of access to emergency medical and mental health care, to the intolerable level of filth and noise in the Unit, and to the vicious cycle of arbitrary punishment, frustration and despair that traps prisoners.

#### **Grossly Inadequate Sanitation**

28. Defendants expose Unit 32 prisoners to grossly unsanitary living conditions and deprive them of the means to maintain basic personal hygiene. This severe lack of sanitation makes the prisoners extremely susceptible to drug-resistant staph infection (MRSA), a highly contagious bacteria that rapidly spreads in institutional settings through dirty laundry and unsanitized surfaces. MRSA causes skin infections and boils and can lead to serious complications such as deep abscesses, pneumonia, endocarditis (infection of the heart), meningitis, bone infection and blood infection. MRSA is rampant in Unit 32 as it is in other Units at Parchman. The MSP infirmary at Unit 42 sees dozens of admissions for staph infections each month – at least one or two each day – many of them from Unit 32.



29. The plumbing is dysfunctional throughout Unit 32: almost every cell has a “ping-pong” toilet that pushes excrement and waste into the bowl in the adjoining cell when flushed. Cells, hallways and showers in Unit 32 are chronically filthy. An overwhelmingly strong stench pervades the Unit – some of it from filth on the tier, some of it from a cesspool adjacent to the buildings, some of it from the defective plumbing and ping-pong toilets, some of it caused by regular flooding that drenches prisoners’ cells and soaks their mattresses and bedding with dirty water that is allowed to stand for days at a time.

30. Severely mentally ill prisoners throw food and excrement on the floor of their cells and into the hallways, which prison staff allow to decompose for days or even weeks. Correctional staff allow severely mentally ill prisoners to go without showers and to leave their toilets unflushed for weeks at a time, subjecting all other prisoners to the stench.

31. The Unit is virtually never disinfected or given any kind of meaningful cleaning. Correctional staff do not supervise the trusty prisoners assigned to clean the showers and halls, and rarely provide prisoners with supplies to clean their own cells, or else provide only filthy water and one bottle of disinfectant to clean scores of cells and toilets on multiple tiers. Many Unit 32 prisoners are routinely moved from cell to cell and forced to occupy cells left in horrendous condition by previous occupants who are mentally ill. Adequate cleaning supplies and equipment are not made available, so the new occupant must use his shower soap, towel and tee shirt to clean up the filth as best he can.

32. Unit 32 prisoners have no way of adequately cleaning their bedding and clothes, making them specially vulnerable to drug-resistant staph infection. When bedding and clothing is sent to the prison laundry, it comes back stained, damp and foul-smelling. If prisoners attempt to do their own

laundry in their cells (in violation of prison rules), they have no way of getting it clean and dry. They are given no change of sheets or bedding; when their bedding is wet or at the laundry, they must sleep on a bare, dirty plastic mattress.

33. Unit 32 prisoners are routinely served dangerously unsanitary food. The carts holding the stacked food trays are filthy; and the trays on which the food is served are cracked, encrusted with residue from other prisoners' meals, littered with insects, and soiled with bird droppings. The food trays are often left for hours in the hot sun before being served, causing the food to spoil. Sudden bouts of vomiting and diarrhea, likely caused by contaminated or spoiled food, afflict prisoners on a regular basis after meal service in Unit 32.

34. The air in Unit 32 is dank. Water pours into the cells from the outside when it rains. When mentally ill or disturbed prisoners flood their toilets, a frequent occurrence, the beds and clothing of prisoners in the cells below become soaked with water and waste. There are no floor drains in Unit 32 cells, and the prisoners are not given supplies to mop up the waste water; so the men are forced to live in foul standing water for prolonged periods, and endure their filthy soaked bedding and clothes until the next laundry day.

#### **Dangerously Inadequate Shelter**

35. The cells in Unit 32 provide inadequate shelter for the prisoners, who are confined to them for 23 to 24 hours a day. In wet weather, rain floods many of the cells, and in freezing weather the cells are very cold. From May to October, when the air temperature at Parchman routinely exceeds 90 degrees Fahrenheit for days at a time, often with extremely high humidity, the cells become dangerously hot and airless.

36. Cell ventilation is grossly inadequate. The large blowers stationed at the entrance to each tier provide virtually no air movement or cross-ventilation inside the cells, particularly those at the opposite end of the tier.

37. From May through September, Unit 32 swarms with clouds of mosquitoes, gnats, horseflies and many other insects, which breed and harass prisoners every moment of the day and night. Swarms of beetles, mosquitoes and other insects cover the prisoners' bodies and enter their food and water. The mosquito and insect infestation is so severe that prisoners are forced, despite the sweltering heat, to close their windows and cover themselves entirely with clothes and bedding.

38. Cell temperatures in Unit 32 routinely reach well above 90 degrees Fahrenheit during the summer months, and the heat index soars well above 100 degrees. Prolonged exposure to high ambient temperatures and humidity poses a life-threatening medical risk. Heat-stroke is a medical emergency which, unless promptly and energetically treated, can result in convulsions, renal failure, circulatory collapse, permanent brain damage, or death. Excessive heat exposure also seriously exacerbates many preexisting respiratory, circulatory and other chronic illnesses.

39. The primary risk factors for heat-stroke during very hot weather are lack of access to air conditioning, advancing age, a number of commonplace chronic medical conditions that interfere with the body's ability to control body temperature (including hyperthyroidism, heart disease, kidney disease, vascular insufficiency and obesity), and use of any of a large number of widely prescribed medications, including most psychiatric medications, anti-hypertensive medications, diuretics, antihistamines and heart medications. Many, perhaps most, Unit 32 prisoners have multiple risk factors and are thus highly vulnerable to heat-related illness.

40. Although thoroughly aware of the risks of excessive temperatures in Unit 32, and of the U.S. District Court's 2002 finding in *Russell v. Johnson* that fans, daily showers and ice are essential minimal measures to lessen these risks during the hot months, Defendants deliberately ignore these findings and refuse to provide such remedies to any prisoner in Unit 32 – other than those under a death sentence. Although death row prisoners now have electric fans in their cells pursuant to Court order, Defendants have confiscated hundreds of fans from the rest of Unit 32 and have plastered over the electric outlets in the cells.

#### **Sleep Deprivation**

41. Unit 32 prisoners are chronically sleep-deprived during the summer by the intense heat and humidity, lack of ventilation, and clouds of mosquitoes and other biting and stinging insects; during freezing weather by lack of warm clothes and bedding; during rains, by rainwater pouring in through leaking walls; and at all times by the pandemonium of seriously mentally ill prisoners expressing their suffering and hallucinations in raving, screaming, moaning and cursing.

42. Defendants recently installed bright fluorescent lighting in most Unit 32 cells without also installing individual light switches in each cell, other than on death row. Prison staff on each tier centrally control the lighting in individual cells and, not infrequently, leave it on for most or all of the night, contributing further to prisoners' inability to sleep. Sleep deprivation has been shown to result in cognitive problems, memory deficits, confusion and anxiety, and intensifies psychiatric symptoms.

#### **Abuse and Neglect of Severely Mentally Ill Prisoners**

43. Mental illness is widespread in Unit 32. Prisoners who come to Unit 32 in relatively sound mental health often develop serious mental illness as a result of the near-total isolation, idleness and

horrific conditions in the Unit. Those who come to Unit 32 with pre-existing, serious mental illness are often reduced to psychosis, mania or compulsive acts of self-abuse. Many prisoners on practically every tier of the five-building complex exhibit clear signs of advanced and untreated mental illness – hallucinating, constantly screaming and cursing, smashing their heads into walls, throwing food and feces, refusing to shower and ignoring basic personal hygiene, and engaging in compulsive flesh-cutting and other acts of self-harm.

44. There is no mental health screening process to prevent the transfer of mentally ill prisoners to Unit 32. In fact, Defendants appear to transfer the most severely mentally ill and psychotic prisoners to Unit 32 precisely because such prisoners can be most easily warehoused and ignored there. Unit 32 correctional staff are not trained to understand mental illness or identify mental health crises. It is common for prison staff to taunt, abuse and neglect severely mentally ill prisoners, allowing them to go without showers for months at a time, and without food for days at a time.

45. Prisoners receive no regular or adequate mental health evaluations once they are in Unit 32. When an evaluation is performed, it almost always occurs at cell-front and is wholly perfunctory, since the complete lack of privacy prevents prisoners from speaking openly; it is impossible to conduct a meaningful psychiatric evaluation in the noise and chaos of the tier.

46. Prisoners who are suicidal or at risk of self-harm and urgently need to see a mental health professional must navigate the same convoluted sick-call process used for medical complaints, in which requests for help are ignored for weeks. Many suicidal prisoners correctly conclude that their best chance of getting help is to prove they are a self-risk by hurting themselves.

47. Mentally ill prisoners who attempt to hurt themselves may be temporarily admitted to the Unit 42 infirmary for “observation.” At times, Defendants have imposed a standing order that

prisoners admitted to the infirmary for suicidal impulses are to receive “no privileges” – meaning no clothes, hospital gown, mattress, bedding, soap or toilet paper. Many mentally ill prisoners have been held naked for days in a filthy bare cell in the psychiatric wing of the Unit 42 infirmary under the “no privileges” order. Psychiatric patients in the infirmary are monitored by video and not seen regularly by doctors or nurses. There are no activities, outdoor exercise or opportunities for human contact; the day room on the psychiatric wing is rarely used.

48. Prisoners with untreated mental health problems who compulsively hurt themselves or act out in other ways often wind up in the holding tank near the Unit 32 clinic, where they are stripped naked and left for an entire shift, or in “management isolation units” or “punishment cells” on the cell-block, where they may be left naked without medical or psychiatric intervention for days. Assignment to punishment cells, management isolation units, or the “special needs” tier is subject to no written guidelines or time limits and is largely punitive, designed for prisoners who have been identified as troublemakers. Many of these prisoners suffer from serious mental illness that has been exacerbated by the lack of adequate mental health care and the harsh conditions in Unit 32.

49. In the past, “punishment cells” – cells outfitted with solid doors rather than open-bar fronts – were scattered throughout Unit 32, at the front of each tier. Now Defendants are converting entire tiers and zones into isolation units, retrofitting every cell with a plexiglass or steel door that makes it impossible for the cell inhabitant to summon help or communicate with anyone.

50. As the Defendants are aware from the expert testimony at the *Russell* trial, solid cell-fronts create an intolerably high risk of lethal heat-stroke during the hot weather months, a risk that is particularly acute for prisoners who suffer from mental illness. Defendants have chosen to begin the process of installing solid doors in an area where they house the most vulnerable prisoners – the

“special needs psychiatric tier” in Delta Building.

51. Defendants created the special needs psychiatric tier following the U.S. District Court’s 2003 order enjoining them from housing severely mentally ill prisoners on death row. Residents of the special needs tier do not, however, receive more frequent or meaningful attention from mental health staff; Defendants simply use this tier as a dumping ground for prisoners with mental illness, and to punish prisoners seen as “management problems” by housing them in close proximity to floridly psychotic prisoners.

52. For months, Defendants left a disturbed, deaf-mute prisoner in his cell on the special needs tier, without a mental health evaluation or any attempt to communicate with him. His cell became filthy and he was allowed to remain unwashed for weeks. Correctional staff threw things at him to get his attention, and when he threw things back, he was cited for rule violations.

53. In addition to the special needs tier, Defendants recently created at least one so-called “management isolation unit” in Alpha Building. All the cells in the management isolation unit have modified plexiglass cell-fronts. Like many prisoners in Unit 32, prisoners in management isolation suffer from serious medical or mental health problems – such as severe asthma, seizure disorders and suicidal ideation – that make it essential for them to be able to summon help quickly. Because of the solid cell-fronts and severe understaffing, however, such prisoners must yell, bang on walls and set fires to get the officers’ attention. Cell fires, which are common throughout Unit 32, are a daily routine in the management isolation tier. The fires sometimes burn for ten minutes before officers respond. Thick smoke and extinguisher fumes travel the length of the tier and seep into the cells.

#### **Inadequate Access to Medical, Mental Health and Dental Care**

54. In April 2003, the State of Mississippi engaged Correctional Medical Services, Inc. (CMS),

a private for-profit health care services company, to provide medical, dental and mental health care to prisoners incarcerated at Mississippi State Penitentiary (MSP) and other MDOC facilities. Under the terms of its contract with CMS, and consistent with its obligations under state and federal law, MDOC remains responsible for the care and security of the prisoners in its custody and has the contractual right to review and approve CMS policies and procedures, monitor CMS' performance, and approve key CMS personnel.

55. The CMS and MDOC Defendants provide Unit 32 prisoners with grossly inadequate access to health care. Medical staff routinely ignore requests for urgent care by prisoners with dangerous and painful medical, dental and mental health problems. Prisoners often must submit multiple sick-call requests, over the course of several weeks, or badger correctional officers before they are able to see a doctor or nurse. Many prisoners who have been requesting medical attention for weeks wind up being taken away from Unit 32 by ambulance, after their condition has become so urgent and life-threatening that it can no longer be ignored by prison staff.

56. Defendants' medical staff fail to identify many prisoners with serious and chronic conditions; these prisoners do not get essential monitoring and ongoing care. The treatment that CMS and MDOC provide for chronic conditions, such as diabetes, hypertension and heart disease, falls far below well-established standards of care that are widely accepted by the medical community.

57. CMS and MDOC medical staff fail to monitor prisoners with complex medical problems. Erratic prescription drug delivery and other lapses in treatment are routine. Medical staff often deny patients accurate information about their own serious medical conditions and the results of medical tests, even when the results are abnormal, and do not explain to prisoners how to manage their illnesses.



58. Even for well-documented chronic illnesses, Defendants' medical staff force prisoners to plead for follow-up treatment and medication refills. Every time the patient does seek essential treatment or follow-up care for an acute or chronic illness, Defendants charge him a six-dollar co-pay – an exorbitant charge by prison standards that is clearly intended to (and does) discourage patients from seeking necessary care.

59. Bad medical record-keeping makes it essentially impossible for Defendants CMS and MDOC to deliver adequate health care to prisoners. Medical records are so disorganized and so poorly maintained that doctors, nurses and support staff simply cannot make appropriate and timely treatment decisions, monitor care of chronically or acutely ill patients, or determine whether prescriptions have been timely delivered or reordered.

60. Defendants' system for refilling prescriptions in Unit 32 is so defective that significant and unnecessary disruptions in medication delivery are routine. For example, Unit 32 prisoners who are HIV-positive are repeatedly denied their HIV medications, sometimes for days at a time, although, as Defendants are well aware, continuity in taking prescribed HIV medication is essential in preventing viral resistance, and a lapse of even a few days can have extremely serious health consequences. Even for medications that are administered by nurses on a daily basis, such as most psychiatric drugs, entirely unnecessary disruptions in medication are common. Nurses often inform prisoners only a day or two in advance that their medication is about to run out, and then leave it to the prisoner to put in a request to see a doctor in order to authorize the refill. A two- to three-week medication gap almost always ensues.

61. In an effort to trim costs, Defendants CMS and MDOC actively discourage physicians at MSP from referring prisoners for off-site medical consultation, even when their medical conditions

are serious and life-threatening. Thus, critically ill prisoners who need to be seen by off-site specialists – such as cardiologists, surgeons and oncologists – are not referred; instead, these prisoners are admitted to the MSP infirmary at Unit 42, which has neither the staff nor the equipment to diagnose and treat critically ill prisoners. Defendants' failure to properly diagnose and treat critically ill prisoners through prompt referral to off-site specialists results in pain, suffering and increased medical complications for many prisoners, and premature death for some.

62. On information and belief, CMS and MDOC Defendants sometimes arrange for the transfer of seriously ill prisoners to private prison facilities in Mississippi, to hide evidence of Defendants' own inadequate medical care and to save the imminent cost of caring for such prisoners, whose health has worsened due to the lack of proper treatment. For example, prisoner Antonio Franklin came to Unit 32 in 2003 with congenital heart disease and a history of three open heart surgeries and a porcine valve replacement. Defendants were aware of his tenuous medical condition at the time of his intake. Franklin's heart function needs to be monitored closely and his medications adjusted regularly, because he is always at risk of aortic rupture and sudden death. By September 2004, Franklin was experiencing regular chest pain. On September 15, 2004, a CMS physician examined Franklin and noted that he needed an immediate off-site evaluation by a cardiologist by the end of the month. On December 1, Plaintiffs' counsel notified MDOC and CMS that Franklin still had not been seen by a cardiac specialist and his situation was urgent. Despite these warnings, the off-site evaluation was not performed until February 11, 2005. By late February, the results of the evaluation were still not found in Franklin's extremely disorganized medical chart, and there was a progress note from a staff physician indicating that he or she did not know why Franklin was even being followed. On information and belief, after many months of neglect and substandard medical care,

Defendants transferred Franklin to a private prison in April 2005.

63. Defendants knowingly retain unqualified and incompetent doctors to provide medical and mental health care to Unit 32 prisoners. Two physicians at MSP are not approved to practice anywhere in Mississippi (or any state) except at Parchman. These doctors, who have never passed their medical boards, have a special license that allows them to work only at MSP under the “favorable recommendation” of the medical director. This special exemption – a limited institutional licensure – appears to have been created at the behest of MDOC to cover these particular longtime employees, at least one of whom Defendants know to be dangerously incompetent. The Mississippi State Board of Medical Licensure has disciplined and had previously restricted the medical licenses of three other physicians at MSP, including the CMS-Parchman Medical Director (due to habitual drug use), the Chief Psychiatrist (due to a history of patient sexual exploitation and sexual harassment), and a contract physician (due to medicare fraud involving the performance of unnecessary cardiac stent procedures and controlled substance abuse).

#### **Arbitrary Placement and Indefinite Detention in Unit 32**

64. The totality of conditions described above – profound isolation, complete physical and mental idleness, dangerously flawed security, the routine use of excessive force, extreme filth and lack of sanitation, malfunctioning toilets that cough up human excrement, constant exposure to insects and vermin, unbearable heat, grossly inadequate medical and mental health care, and the hellish proximity of constantly screaming and hallucinating prisoners whose madness goes untreated – in combination make Unit 32 the worst place to be incarcerated in Mississippi, perhaps in the nation. Compounding these horrors, the great majority of the men in Unit 32 remain there for years; some have been there for decades. Virtually all assignments to Unit 32 are for an indefinite period

– meaning no one knows when, or if, he is getting out.

65. Prisoners generally receive no advance notice or explanation before they are transferred to Unit 32, and it may be months before they receive a classification hearing after arriving on the Unit. Many have been confined in Unit 32 for months or years without any clear understanding of why they were placed there. When classification reviews do occur, prisoners rarely receive advance notice – written or otherwise – of the hearing, much less of the evidence against them. The final decisionmaker is not required to provide any reasons or factual basis for his or her decision, and no guidance is ever given as to what conduct is necessary to get out of Unit 32. Prisoners who remain free of significant rule violations for years are still not released from Unit 32. Prisoners whose case managers recommend they be upgraded and released find that those recommendations are overridden by higher-level prison officials, for reasons that are neither shared with the prisoner nor recorded. On information and belief, confinement in Unit 32 has the effect of denying otherwise eligible prisoners parole consideration and other types of earned time or early release.

66. The MDOC classification system – touted as an “objective” point system but impenetrable to most prisoners – gives essentially unlimited discretion to MDOC officials in determining custody levels and confinement status. Although Unit 32, like any supermax facility, was designed and intended to house the most dangerous offenders, MDOC places prisoners in Unit 32 for a variety of reasons, most of which have nothing to do with legitimate security concerns. Many prisoners wind up in Unit 32 solely because they have special dietary or medical needs, because they are partially disabled, because they have requested or need protective custody, because they are HIV positive, or because they need (but do not get) significant mental health care. Many other prisoners are placed or remain indefinitely in Unit 32 for purely arbitrary reasons, or due to classification errors, or

because they cannot convince their unit case manager to schedule a reclassification hearing.

67. Prisoners may be assigned indefinitely to administrative segregation, and thus to Unit 32, because they are designated Security Threat Group (STG), for alleged gang membership; or High Security Risk (HSR), for being a presumed escape risk; or Management Isolation, because they are deemed to be a physical threat to staff and other prisoners. On information and belief, many of these assignments are factually erroneous or entirely unnecessary. For example, an elderly prisoner who could scarcely walk unassisted was kept on HSR status for years until his death due to an escape attempt many years before. There are virtually no written guidelines to govern these segregation categories; prisoners so designated are simply transferred to Unit 32, or to punishment cells within Unit 32, and are held for many months without any classification review whatsoever, or for many years without any meaningful opportunity to dispute their custody or segregation status.

68. Because of the often arbitrary, baseless, punitive and unreviewable nature of assignment to Unit 32, virtually every prisoner there despairs of ever getting out of lockdown. This total absence of hope, as much as any other condition of confinement, inflicts pain and suffering, and contributes to the mental and physical deterioration of the men in Unit 32.

#### **Named Plaintiffs**

69. **Jeffery Presley** is 24 years old and has been housed in Unit 32 since 2003. Mr. Presley contracted a serious staph infection (MRSA) on his left knee on or about July 19, 2004. By July 21, 2004 his knee was swollen, red, itching and painful. A doctor at the Unit 32 clinic initially misdiagnosed Mr. Presley's condition as resulting from a brown recluse spider bite. Mr. Presley was given only topical antibiotic cream and five band-aids. Mr. Presley pleaded with correctional officers and hospital staff for additional medical treatment over the next four days, as his knee grew

progressively worse, until it was grotesquely swollen and leaking blood. On July 25, 2005, after being held all night in the Unit 32 holding tank without medical attention, Mr. Presley was taken to the Unit 42 infirmary, where a doctor cut out a section of his leg and packed it with medicated string. He was sent back to Unit 32 with Tylenol. For days afterward, Mr. Presley was forced to hop up and down several flights of stairs at Unit 32, in order to have his dressing changed daily. His request to be moved to a downstairs cell was denied. In January 2005, Mr. Presley satisfied the requirements to be taken off HSR status, upgraded to B-custody, and moved out of Unit 32. MDOC Defendants have denied him reclassification and transfer. He has not been provided with a written explanation for this decision.

70. **Dennis Brumfield** is 40 years old and has been housed in Unit 32 since 1997. In 2003, Mr. Brumfield was one of a number of non-death row prisoners who filed grievances complaining about the totality of conditions in Unit 32, many of which were then being challenged on behalf of death row prisoners in *Russell v. Johnson*. Mr. Brumfield has been subjected to, and complained about, conditions including grossly inadequate sanitation, excessive heat and cold, lack of exercise, vermin infestation, defective plumbing, ceiling leaks, inadequate treatment and housing of mentally ill prisoners, enforced isolation and idleness, harassment and excessive force by correctional officers, and ongoing sleep deprivation due to environmental conditions in the Unit.

71. **Steven Farris** is 23 years old and has been housed at Unit 32 since he was transferred there in 2001, at the age of 19, for allegedly plotting an escape. Mr. Farris had no opportunity to defend himself against the escape charge for almost two years and never saw the evidence against him. In 2003, Mr. Farris was one of a number of non-death row prisoners who filed grievances complaining about the totality of conditions in Unit 32, many of which were then being challenged on behalf of

death row prisoners in *Russell v. Johnson*. Mr. Farris has been subjected to, and complained about, grossly inadequate sanitation, excessive heat and cold, lack of exercise, vermin infestation, defective plumbing, ceiling leaks, inadequate treatment and housing of mentally ill prisoners, enforced isolation and idleness, harassment and excessive force by correctional officers, and ongoing sleep deprivation due to environmental conditions in the Unit.

72. **Marcus D. Williams** is 29 years old and has been housed in Unit 32 since 2003. Mr. Williams suffers from seizure disorder, hypertension and has a history of self-harm incidents and serious mental illness. During his time at Unit 32, he has received grossly inadequate medical and mental health care and has been subjected to egregiously punitive confinement in punishment cells, on the special needs psychiatric tier, and in the management isolation unit. Mr. Williams is currently being housed on the special needs tier, in a cell with a newly installed solid steel door, where he is kept without human contact for 23 or 24 hours a day. The lights in his cell are kept on 24-hours a day. The cell is virtually sound-proof and there is no intercom, so Mr. Williams is unable to summon help or medical attention if he needs it. Previously, Mr. Williams was housed behind a solid plexiglass door in the management isolation unit, where he resorted to setting fires after he was denied seizure medication three days in a row because the nurses kept showing up without a refill and confusing his chart with that of another prisoner.

#### **Exhaustion of Administrative Remedies**

73. Plaintiffs have exhausted all administrative remedies available to them on the matters alleged above by timely submitting all necessary grievance letters and appeal forms.

74. **Jeffery Presley** submitted a request for an administrative remedy on or about July 25, 2004, complaining of inadequate medical care, unsanitary food service and environmental conditions, leaky

ceilings, defective plumbing, and regular harassment by correctional officers. Mr. Presley received a certificate of exhaustion dated November 15, 2004, stating that he has fulfilled the requirements of the Administrative Remedy Program (ARP). Mr. Presley also submitted a request for an administrative remedy on or about November 17, 2004, complaining that he should be reclassified and transferred to general population. He received a certificate of exhaustion dated January 17, 2005.

75. **Dennis Brumfield** requested an administrative remedy for inadequate living conditions in Unit 32 on or about November 3, 2003. Mr. Brumfield specifically complained of the totality of conditions being litigated in *Russell v. Johnson*, on behalf of death row prisoners. He received a certificate of exhaustion dated January 15, 2004.

76. **Steven Farris** submitted a request for an administrative remedy on September 2, 2003 complaining of grossly inadequate conditions of confinement and inadequate due process in connection with periodic classification reviews. The Legal Claims Adjudicator rejected Mr. Farris' ARP request, indicating that a remedy had been requested for more than one incident. Mr. Farris subsequently wrote to the MSP Superintendent and twice to the MDOC Commissioner disputing this determination and arguing that it was unreasonable to require him to file separate ARP requests on the many deficient conditions in Unit 32, most of which were then being litigated in *Russell v. Johnson*, and that doing so would take him several years to exhaust his administrative remedies. The Superintendent and Commissioner responded to Mr. Farris' requests to intervene and reconsider his grievance on October 3, 2003 and February 10, 2004, respectively, declining to intervene. Mr. Farris has exhausted the administrative remedies reasonably available to him.

77. **Marcus D. Williams** filed an emergency grievance on March 2, 2005, requesting immediate



relief from the dangerous conditions to which he was being subjected in the Unit 32 management isolation unit, including total isolation, lack of ventilation, and inadequate medical and mental health care, as well as the lack of due process in connection with his placement in administrative segregation. The Legal Claims Adjudicator declined to grant emergency relief and accepted Mr. Williams' emergency grievance as a regular request for an administrative remedy. On information and belief, Mr. Williams has timely filed all necessary appeals of this ARP request; or, if he failed to do so, he was impeded by the egregiously punitive and restrictive conditions in which he has been housed for the last several months, in total isolation behind a solid steel cell-front, and by his mental illness and physical infirmities, which are not being properly treated or accommodated by Defendants. Under MDOC grievance procedures, which requires that the ARP process be completed within 90 days, Mr. Williams exhausted his administrative remedies on or about June 2, 2005.

78. On March 4, 2005, an emergency grievance was also filed by Plaintiffs' counsel on behalf of Mr. Williams, and two other prisoners in the management isolation unit, Terry Beasley and Marco Deshaw Williamson. Despite the urgent and life-threatening conditions detailed in the emergency grievance, the Legal Claims Adjudicator declined to address the matter under emergency review procedures and suggested that the grievance should be resubmitted as a regular grievance by the prisoners. Plaintiffs' counsel appealed this decision to the Commissioner, who concurred, on April 7, 2005, that the totality of conditions to which Mr. Williams and other prisoners were being subjected were not an emergency. Under MDOC grievance procedures, which require that the ARP process be completed within 90 days, this emergency request for an administrative remedy was exhausted on or about June 4, 2005. When Terry Beasley attempted to submit a regular grievance about the horrific conditions in the management isolation unit, as suggested by the Legal Claims

Adjudicator, a prison official rejected his ARP and told him that the ACLU had already filed a grievance on his behalf.

### **CLASS ACTION ALLEGATIONS**

79. Plaintiffs bring this action on behalf of themselves and all others similarly situated, pursuant to Fed. R. Civ. P. 23(a) and (b)(2).

80. Plaintiffs seek to represent a class consisting of all prisoners who are now, or will in the future be, confined in Unit 32 of Mississippi State Penitentiary in Parchman, Mississippi.

81. There are currently approximately 1000 prisoners confined at Unit 32. The members of the class are too numerous, and the membership of the class too fluid, to permit joinder of all members. All class members are equally subject to the unconstitutional and unlawful conditions described in this Complaint, and common questions of law and fact exist as to all class members. These common questions include, but are not limited to, whether conditions of confinement for Unit 32 prisoners at Parchman violate their rights under the Eighth and Fourteenth Amendments to the United States Constitution; whether the systemically inadequate medical, mental health and dental care provided to Unit 32 prisoners violates their rights under the Eighth and Fourteenth Amendments to the United States Constitution; and whether the procedures by which MDOC Defendants place and retain prisoners in Unit 32 fail to satisfy procedural due process, in violation of their rights under the Fourteenth Amendment to the United States Constitution. Defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

82. The claims of the named plaintiffs are typical of those of the class. They do not have access

to minimally adequate medical and mental health care, and are exposed to the dangerous and inhumane conditions in Unit 32. They have not received procedural due process in their placement and continued confinement in Unit 32.

83. Plaintiffs will fairly and adequately represent the interests of the class. The interests of Plaintiffs are consistent with those of the class, and they are represented by counsel who are experienced in class action, civil rights, and prison conditions litigation.

### **CLAIMS FOR RELIEF**

#### **First Claim – Eighth Amendment**

By consciously subjecting Plaintiffs to the grossly inhumane and dangerous conditions of confinement and to the extreme deprivations of basic medical and psychiatric care described herein, Defendants have acted, and continue to act, with deliberate indifference to Plaintiffs' serious health and safety needs, and have violated their rights under the Eighth and Fourteenth Amendments to the United States Constitution.

#### **Second Claim – Denial of Procedural Due Process**

By placing and retaining Plaintiffs in Unit 32, where the conditions of confinement impose on Plaintiffs atypical and significant hardships in relation to the ordinary incidents of prison life, without affording Plaintiffs minimal notice, opportunity to be heard, and other basic procedural safeguards, Defendants have denied, and continue to deny, Plaintiffs due process, in violation of their rights under the Fourteenth Amendment to the United States Constitution.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Issue a judgment declaring that the actions of Defendants described herein are

unlawful and violate Plaintiffs' rights under the Constitution and laws of the United States;

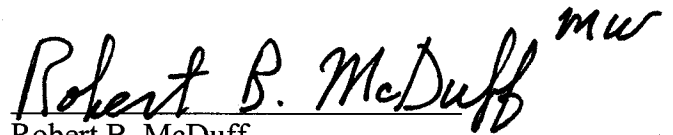
2. Preliminarily and permanently enjoin Defendants, their subordinates, agents, employees, and all others acting in concert with them, from subjecting Plaintiffs to the conditions set forth in this Complaint;

3. Grant Plaintiffs their reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988 and other applicable law; and

4. Grant such other relief as the Court considers just and proper.

Date: June 21, 2005

BY:

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