IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TYLON HUDSON; LATON STUBBLEFIELD; ANGELO MATTHEWS; JERMAINE BROOKS; ANTON CARTER, on behalf themselves and all similarly situated individuals,	)	
Plaintiffs,	)	Case No. 13cv8752 Judge Shadur Magistrate Judge Kim
v.	)	
TONI PRECKWINKLE, in her official capacity as President of the Cook County Board; THOMAS J. DART, in his individual and official capacities as Cook County Sherriff; CARA SMITH in her official capacity as Executive Director of the Cook County Department of Corrections; SUPERINTENDENT OF DIVISION X E.GREER; in his official capacity; SUPERINTENDENT OF DIVISON IX, V. THOMAS, in his official capacity; COOK COUNTY BOARD OF COMMISSIONERS, in their official capacities; OFFICER CAMPBELL in his individual capacity; SARGEANT LEWIS in her individual capacity; OFFICER WILSON in her individual capacity; LIEUTENANT JOHNSON, in her individual capacity,	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF MOTION FOR
<u>CLASS CERTIFICATION AND APPOINTMENT AS CLASS COUNSEL</u>

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Defendants.	)	

MEMORANDUM IN SUPPORT OF MOTION FOR
CLASS CERTIFICATION AND APPOINTMENT AS CLASS COUNSEL

Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs move the Court to enter an order that this case may be maintained as a class action on behalf of: all persons held, now and in the future, in Divisions 9 and 10 of the Cook County Jail. Plaintiffs further request an order appointing the undersigned attorneys as class counsel.

BACKGROUND AND SUMMARY OF ARGUMENT

Plaintiffs' suit for injunctive relief under the Eighth and Fourteenth Amendments is based on their contention that Defendants have been, and continue to be, deliberately indifferent to the significant risk that class members will be severely injured by the use of brutal and unnecessary force at the hands of correctional officers and other detainees in Divisions 9 and 10 of the Cook County Jail ("the Jail").

The claims of the class are ideally suited to proceed as a class action under Federal Rule of Civil Procedure 23(b)(2). This is so because (a) every single member of the class has the same legal theory as to why their Eighth and Fourteenth Amendment rights are being violated; (b) a use of force policy that applies across the board contributes to the risk of harm that class members face; (c) every single member of the class will utilize precisely the same evidence in support of his cause of action; and (d) every single member of the class seeks a uniform injunction against the failure to protect detainees from physical injury and unconstitutional violence at the hands of officers and other detainees. In other words, the named Plaintiffs and the putative class share all legal claims, all factual questions are common to the named Plaintiffs and the putative class, and the named Plaintiffs and the class all seek the same injunctive relief.

It is true that Plaintiffs will rely, in part, on a series of different incidents of officer-on-detainee abuse and officers' failure to protect detainees—but they will do so to prove that there is a pattern and practice of officers attacking detainees and turning a blind eye to detainee attacks on detainees in the Jail. Moreover, a generally applicable use of force policy contributes to the pattern of unrestrained violence. Thus, individual incidents will be marshaled in support of the common question of whether Defendants are deliberately indifferent to the right of all detainees in the Jail to be free of the significant risk of severe injury as a result of physical violence.

In addition to commonality, the class easily satisfies the other requirements of Rule 23(a) as well as the requirements of Rule 23(b)(2). Joinder is impracticable because the number of inmates in Divisions 9 and 10 substantially exceeds 1500 on any given day.

The claims of the named Plaintiffs are typical of those of the class as a whole. That typicality is not solely the result of their having been beaten by officers and other detainees—although they have been—but stems from their claim that Defendants have placed them at significant risk of physical abuse by failing to take appropriate steps to address the pattern of illegal force that they are aware of. That claim is identical across the whole of the proposed class.

Named Plaintiffs have no conflicts with the unnamed members of the proposed class. Their lawyers are experienced in federal court civil rights class actions, particularly those involving prisons and jails. Thus, named Plaintiffs and their counsel will adequately represent the interests of the proposed class.

Finally, Defendants' have failed to address a culture of physical brutality that thrives among correctional officers in the Jail, and Defendants' flawed use of force policy applies across the entire class. In short, Defendants have refused to act in a manner that applies generally to the class as a whole, rendering class-wide injunctive relief appropriate under Federal Rule of Civil Procedure 23(b)(2).

In addition to the violence claim, Plaintiffs also seek class certification with regard to their injunctive solitary confinement claim. Class members run the risk of being thrown in the solitary confinement units of Divisions 9 and 10 at any time. Class members present a unified injunctive claim under the Cruel and Unusual Punishments Clause of the Eighth Amendment because, when subjected to solitary confinement, they experience almost identical forms of non-touch torture. They remain locked down alone in their cells in stretches of more than 23 hours

each day. During the brief time they are allowed to emerge from their cells, they remain alone in a cramped "dayspace," where they can barely exercise. Sanitation is deplorable. Phone calls are limited to five minutes a week. Detainees subject to this torture hear those in neighboring cells screaming into the night as they descend into psychosis.

ARGUMENT

I. THE COURT SHOULD CERTIFY THE CLASS, CONSISITING OF ALL CURRENT AND FUTURE DETAINEES IN DIVISIONS 9 AND 10

A. With Regard to the Violence Claims, The Proposed Class Meets All of the Requirements for Maintenance of A Class Action

For a district court to certify a class action, the named plaintiffs or the proposed class must satisfy the numerosity, commonality, typicality, and adequacy requirements of Rule 23(a) and at least one requirement of Rule 23(b). *Rosario v. Livaditis,* 963 F.2d 1013, 1017 (7th Cir. 1992). Because named Plaintiffs and the proposed class meet all four Rule 23(a) requirements and the requirements of Rule 23(b)(2), the class should be certified.

1. Numerosity is Satisfied: The Class Includes Hundreds of Members

Federal Rule of Civil Procedure 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "[A] class including more than 40 members is generally believed to be sufficient." *Barragan v. Evanger's Dog and Cat Food Co.,* 259 F.R.D. 330, 333 (N.D.Ill. 2009); *Streeter v. Sheriff of Cook County*, 256 F.R.D. 609, 612 (N.D. Ill. 2012) (same); *accord* William B. Rubenstein, et al., Newberg on Class Actions, § 3:12 (5th ed. 2011) ("a class of 40 or more members raises a presumption of impracticability of joinder based on numbers alone"). Numerosity is easily satisfied here.

Hundreds of detainees are housed in Divisions 9 and 10 and each is impacted by the violence policies challenged in this lawsuit.[1]

2. Commonality is Satisfied: The Challenged Violence Practices Present Numerous Common Questions of Fact and Law.

Rule 23(a)(2) requires that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "A common nucleus of operative fact is usually enough to satisfy the commonality requirement." *Rosario*, 963 F.2d at 1018; *Streeter*, 256 F.R.D. at 612 (same). "Rule 23 must be liberally interpreted" and should be read to favor maintenance of class actions, *King v. Kansas City S. Indus.,* 519 F.2d 20, 25-26 (7th Cir. 1975); *Scholes v. Stone, McGuire & Benjamin*,143 F.R.D. 181, 185 (N.D. Ill. 1992) ("[T]he commonality requirement has been characterized as a 'low hurdle' easily surmounted.").

An injunctive challenge to a systemic failure to protect class members from rampant violence is a textbook example of a case that satisfies the commonality requirement and warrants class certification. Indeed, "[a] class action is . . . an appropriate vehicle to address what is alleged to be a systemic problem . . . ." *Coleman v. County of Kane*, 196 F.R.D. 505, 507 (N.D. Ill. 2000) (finding commonality in case against sheriff regarding bond fees); *Corey H. v. Board of Educ. of City of Chicago*, No. 92 C 3409, 2012 WL 2953217, at *7 (N.D. Ill. Jul. 19, 2012) ("Plaintiffs have attacked … systemic failures and district-wide policies that apply to every member of the certified class …"); *M.D. v. Perry*, 294 F.R.D. 7, 35 (S.D. Tex. 2013) (certifying class of foster children who alleged that Defendants created a "systematic deficiency [that] causes an unreasonable risk of harm" in the form of increased sexual abuse and violence); *Rosas v. Baca*, No. CV 12–00428, 2012 WL 2061694, at *3 (C.D. Cal. June 7, 2012) (certifying class

[1] *See* Ex. 13 (Sheriff Website Printout) (Division 9 is designed to hold 1,056 detainees and Division 10 is designed to hold 768 detainees).

in jail violence claim); *Hughes v. Judd*, No. 8:12–cv–568–T–23MAP, 2013 WL 1821077, at *23 (M.D. Fla. Mar. 27, 2013) (certifying class of detainees subjected to unconstitutional jail conditions); *Jones v. Gusman*, __F.R.D. __, 2013 WL 2458817, at *9 (E.D. La. June 6, 2013) (certifying class in jail violence claim); *Butler v. Suffolk Cnty.*, 289 F.R.D. 80, 98 (E.D.N.Y. 2013) (certifying class of detainees in jail sanitation case); *Parsons v. Ryan*, 289 F.R.D. 513 (D. Ariz. 2013) (certifying statewide class of prisoners alleging inadequate medical and mental health care).

Indeed, this Court has certified numerous classes of detainees challenging illegal conditions of confinement at the Cook County Jail. *See, e.g., Streeter v. Sheriff of Cook County*, 256 F.R.D. 609, 612-13 (N.D. Ill. 2009) (certifying class of detainees strip searched upon entry to Cook County Jail); *Jackson v. Sheriff of Cook County*, No. 06 C 0493, 2006 WL 3718041, No. 06 C 0493 (N.D. Ill. Dec. 14, 2006) (certifying class of detainees involuntarily subjected to an STD test at the Cook County Jail); *Parish v. Sheriff of Cook County*, No. 07 4369, 2008 WL 4812875, at *4 (N.D. Ill. Oct. 24, 2008) (certifying class of Cook County Jail detainees who were denied adequate medical care); *Phipps v. Sheriff of Cook County*, 249 F.R.D. 298, 301 (N.D.Ill. 2008) (certifying class of all detainees using wheelchairs in the Cook County Jail who were subjected to discrimination); *Smentek v. Sheriff of Cook County*, No. 09 C 529, 2013 WL 6696961, at *1 (N.D.Ill. Dec. 19, 2013) (noting certification of class consisting of all detainees in the Cook County Jail who suffered from dental pain and experienced a delay in treatment).

To be sure, as the Supreme Court held in its latest major pronouncement on commonality, Plaintiffs must demonstrate that there is "some glue" holding the claims together; the class claims "must depend upon a common contention" that is "of such a nature that it is capable of classwide resolution." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551-52 (2011). ("What

matters to class certification . . . is not the raising of common 'questions . . . but, rather the capacity of a classwide proceeding to generate common answers . . .") (citations and quotations omitted; emphasis and first ellipsis in original). In numerous post-*Walmart* cases challenging jail and prison conditions, courts have found that common policies and conditions provide the "glue" necessary to hold a class together. *E.g., Olson v. Brown*, 284 F.R.D. at 410-11 (jail policies and conditions); *Rosas*, 2012 WL 2061964, at *3 (jail violence case); *Jones*, __ F.R.D. __, 2013 WL 2458817, at *9 (jail violence case); *Hughes*, 2013 WL 1821077, at *23 (unconstitutional conditions for juvenile detainees); *M.D.*, 294 F.R.D. at 35 , 2013 WL 4537955, at * 22 (foster children facing abuse); *Parsons*, 289 F.R.D. 513 (inadequate medical and mental health care in state prisons); *Butler*, 289 F.R.D. at 98 (jail sanitation case); *Abadia-Piexoto v. United States Dept. of Homeland Security*, 277 F.R.D. 572, 577 (N.D. Cal. 2011) (shackling of detainees during judicial proceedings).

The "glue" that was lacking in *Wal-Mart* exists in this case: Plaintiffs allege that all members of the proposed class are at significant risk of brutal violence at the hands of officers and detainees due to Defendants' systemic failure to implement policies and practices necessary to halt the longstanding and pervasive pattern of savage attacks in Divisions 9 and 10. Furthermore, commonality was lacking in *Wal-Mart* because there was no proof that Wal-Mart "operated under a general policy of discrimination." 131 S.Ct. at 2554. *See also Bolden v. Walsh Const. Co*., 688 F.3d 893, 897 (7th Cir. 2012) (explaining that an across the board procedure or policy would have supplied the commonality that was lacking in *Wal-Mart*). In this case, by contrast, a flawed Cook County Department of Corrections Use of Force Policy, promulgated by Defendant Dart, applies across the board and contributes to rampant violence at the Jail. Schwartz Dec. ¶¶ 29-40. *See also Arreola v. Godinez*, 546 F.3d 788, 798 (7th Cir. 2008)

(finding commonality in case challenging Illinois Department of Corrections policy that restricted the use of crutches).

Resolving whether there is a pattern of abuse that poses a significant risk of severe injury to the class and whether Defendants have failed to adopt policies and practices that are a reasonable response to that threat will yield exactly the kind of "common answer" to Plaintiffs' Eighth and Fourteenth Amendment claims that the Supreme Court was referring to in *Wal-Mart*. 131 S. Ct. at 2551.

As the Supreme Court explained in *Wal-Mart*, "for purposes of Rule 23(a)(2) [e]ven a single [common] question will do . . ." 131 S. Ct. at 2556 (citation and internal quotations omitted; alterations in original). Plaintiffs here, however, can show multiple common questions: all of the following factual and legal contentions (each of which pertains to overarching patterns and practices) are common to the class and will lead to common answers.

a. Common Contention No. 1

There is an unlawful pattern and practice at the Jail of excessive physical violence used by correctional officers against inmates.

Support for Common Contention No. 1: The declarations filed by Plaintiffs in support of this motion—nearly 100 in number—demonstrate that Divisions 9 and 10 of the Jail are dominated by a culture of officer-on-detainee violence that often results in crippling injury. Nearly every declaration cites instances of staff-on-detainee abuse. These incidents are too numerous to catalog here, but some of the more horrific beatings include the following:

> While the detainee was on the floor, the Hispanic officer stomped and kicked him in the head, and he started bleeding from his mouth.
>
> Then, approximately 10-15 officers arrived. The officers yelled at all of the detainees on the tier to lay down on the ground. All of the detainees were ordered back in their cells. From my cell, I saw one of the officers throw the detainee

> against the wall like he was trash. He was knocked out and looked like a ragdoll when this happened. I thought he was dead based on how he looked and how hard they beat him. Then the officers took him somewhere that I couldn't see. I never saw the detainee again.

Declarant 13 (Ex. 3) ¶¶ 1-5; *see also* Declarant 31 (Ex. 5) ¶ 2 (corroborates above account).

> … I saw an incident occur to a detainee…in the interlock between Division 9, Tier 1E and 1F. [The detainee] said he would not go back to 1F, but was not resisting or fighting in any way. Officers grabbed [the detainee] and threw him down on the ground. Once he was on the ground, the officers punched and kicked him. Then the officers carried him out. Later, one of the officers came back and was bragging that 911 was called because of [his] injuries.

Declarant 74 (Ex. 10) ¶ 2.

> Around October or November 2012, in Division 10-3B, I saw a detainee. . .hit by Officer Appleberry. Then he was handcuffed, face down on the floor. He was not resisting in any way. There were roughly 10-15 officers. Some of the officers were stomping on him while he was on the floor, and the other officers were just watching. Then some of the officers picked him up by the handcuffs and legs. For part of this, he was just being held and dragged with the cuffs, with his legs unsupported, being dragged like a ragdoll. The last I saw was [the detainee] being dragged off.

Declarant 65 (Ex. 9) ¶ 3.

> First, Officer Tadesco grabbed me by the back of my shirt. Another officer swung on me. I fell down. Two officers cuffed behind my back while another officer first put his knee on my neck and then started kicking me in the head. Other officers were trying to cuff my legs together and then cuff my hands to my legs behind my back. I have a metal rod running all along the inside of my right leg. My rod popped out of place and I hollered "I have a rod in my leg." They ignored me and kept beating me. There were about 20 officers there, and several white shirts watching.

Second Declarant 56 Declaration (Ex. 8) ¶ 3. *See also* Declarant 27 (Ex. 4) ¶ 2 ("So Sgt. Duty pushed [a detainee named Chris] in the cell and slammed the door so hard it bounced back open. Lt. Johnson grabbed Chris and that's when they started punching him and screaming obscenities. It was like a show, a wrestling match. We were all then forced into our cell. I didn't see them jump on him anymore but I did see them drag him out."); Declarant 35 (Ex. 6) ¶ 3 ("I walked to

the stairwell, and that's when I was grabbed on my shoulder and I heard the female CO say, 'I got your ass now.' Three other Cos came down the stairs, and CO Williams hit me in my jaw on the right side of my face. I covered my head with my hands, and the other Cos started punching me in my head and on my body. They me about seven or eight times. I asked them what was going on, and they told me to 'shut the f*** up.' Then I heard my finger crack."); Declarant 38 (Ex. 6) ¶ 4 ("About one month ago, a detainee who was new to the deck walked in. He called C.O. Toledo a coward, but wasn't resisting or fighting in any way. He was just standing there. Toledo started punching him in the face, from the neck up, again and again. I saw blood. The detainee fell down like road kill. He was not responding. Still appearing unconscious, he was dragged off of the deck by the feet by C.O. Toledo and another C.O. I have never seen this detainee since."); Declarant 39 (Ex. 6) ¶ 1 ("Rougly a month and a half ago, Officer Flores and a detainee had an argument over a tray. The next day, the detainee was emptying some trash. Then the detainee passed by Flores and said some words to him. The detainee was not resisting or doing anything violent. Flores struck the detainee in the back of the head. The detainee was knocked out cold and fell into Flores' arms. The detainee was bleeding and got blood all over the floor and Office Flores. It happened in a flash. I did not see if Flores hit the detainee with an object, but given that the detainee was bleeding and was knocked out instantly, I don't see how it could have been with just a closed fist."); Declarant 43 (Ex. 7) ¶ 7 ("After he was cuffed, one officer continued to punch him in the face with metal handcuffs. Then, around 10 officers rushed in, yelling at us to get down by your cell door. Officers were kicking and stomping the handcuffed detainee. They made a big ring around him. They were all trying to squeeze in and get a part of the action. After the stomping, they left him on the floor. A white shirt came in to start videotaping at that point. I saw the detainee's injuries; his face had lumps, cuts, and blood

on it."); Declarant 84 (Ex. 11) ¶ 1 ("About two months ago, an inmate was jumped on by staff, beating him with handcuffs repeatedly. It was not necessary for the Correctional Officer (CO) to jump on him as so. When the CO was beating the inmate, he had the handcuffs wrapped around his fist."); Declarant 89 (Ex. 12) ¶ 3 (Guard pushed detainee and slammed cell door on his leg, saying "I don't do stuff for black people"); Declarant 87 (Ex. 12) ¶ 5 (Officer slapped detainee and called him a "nigger").

In addition to the declarations submitted in support of this motion, detainees have filed numerous legal complaints in this Court regarding the pattern of brutal physical violence in Divisions 9 and 10. *See, e.g.,* Complaint, *Ellison v. Dart*, No. 10-C-5224 at 5-6 (N.D. Ill Filed Aug. 18 2010) (Ex. 14); Complaint, *Thompson v. Dart*, No 11-C-1288 at 5 (N.D. Ill Filed Feb. 23, 2011) (Ex. 14); Complaint, *Robinson v. Appleberry*, No. 13-CV-01006 at 4-5(N.D. Ill Filed Feb 7, 2013) (Ex. 15); Complaint, *Gilmore v. Dart*, No. 13-C-1264 at 7 (N.D. Ill Filed Feb 15, 2013) (Ex. 15); Complaint, *Olbera v. Michelchewski*, No. 13-C-1995 at 4 (N.D. Ill Filed Mar. 14, 2013) (Ex. 15); Complaint, *Smith v. Cook County Jail*, No. 13-C-2773 at 6 (N.D. Ill Filed Apr 12, 2013) (Ex. 15); Complaint, *Taylor v. Crot*, No. 13-C-1930 at 4 (N.D. Ill Filed Mar. 12 2013) (Ex. 15); Complaint, *Collins v. Dart*, No 13-CV-3924 at 4 (N.D. Ill Filed May 28, 2013) (Ex. 15); Complaint, *Jackson v. Dart*, No. 13-C-4653 at 8 (N.D. Ill Filed June 25, 2013) (Ex. 16); Complaint, *Harris v. Carol*, No. 13-C-5470 at 2-3 (N.D. Ill Filed July 31, 2013) (Ex. 16); *Complaint Janikowksi v. Cook County Dept. of Corrections*, No. 13-C-7006 at 3 (N.D. Ill Filed Sep 30, 2013) (Ex.16); Complaint, *Lasenby v. Cook County*, No. 13-C-3229 at 2 (N.D. Ill Filed

Nov 7, 2013) (Ex. 16); Complaint, *Williams v. Dart*, No. 13-C-6545 at 5-6 (N.D. Ill Filed Sept. 12 2013) (Ex. 16).[2]

Assaults by officers are frequently characterized by several common modi operendi, including the following:

- **Large numbers of officers congregate to assault detainees.** Declarant 13 (Ex. 3) ¶ 5; Declarant 4 (Ex. 1) ¶¶ 4, 5; Declarant 16 (Ex. 3) ¶ 3; Declarant 43 (Ex. 7) ¶ 7; Declarant 50 (Ex. 7) ¶ 3; Declarant 57 (Ex. 8) ¶ 2; Declarant 64 (Ex. 9) ¶ 5; Declarant 67 (Ex. 9)¶¶ 3, 7; Declarant 71 (Ex. 10) ¶ 2; Declarant 87 (Ex. 12) ¶ 6; Complaint, *Jones v. Dart*, No. 13-C-2651 at 5-6, 7 (N.D. Ill Filed Apr 9, 2013) (Ex. 17); Complaint, *Sanchez v. Dart*, No. 13-CV-3558 at 6 (N.D. Ill Filed May 13. 2013) (Ex. 17).

- **Officers attack detainees who are already restrained in handcuffs and/or shackles**. Second Declarant 80 Declaration (Ex. 11) ¶ 2; Declarant 74 (Ex. 10) ¶ 3; Declarant 29 (Ex. 5) ¶ 2; Second Declarant 55 Declaration (Ex.8) ¶ 3; Declarant 43 (Ex. 7) ¶ 7; Declarant 15 (Ex. 3) ¶¶ 2, 4; Declarant 1 (Ex. 1) ¶¶ 2, 6; Declarant 4 (Ex. 1) ¶ 5; Declarant 41 (Ex. 6) ¶ 5; Declaration (Ex. 7) ¶ 2; Declarant 50 (Ex. 7) ¶ 3; Declarant 67 (Ex. 9) ¶¶ 3-4; Declarant 71 (Ex. 10) ¶ 2; Declarant 79 (Ex. 11) ¶ 8; Declarant 87 (Ex. 12) ¶ 6; Declarant 72 (Ex. 10) (p. 2 of attachments to declaration); Declarant 81 (Ex. 11) ¶ 4; Complaint, *Lasenby v. Cook County*, No. 13-C-3229 at 2 (N.D. Ill Filed Nov 7, 2013) (Ex. 16); Complaint, *Sanchez v. Dart*, No. 13-CV-3558 at 6 (N.D. Ill Filed May 13. 2013) (Ex. 17).

- **Officers assault detainees who are not resisting, sometimes ordering them to "stop resisting" as a pretext for commencing or continuing an attack.** Declarant 67 (Ex. 9) ¶ 3 ("The CO then grabbed my handcuffs and twisted them. The handcuffs cut into my skin. About 10-15 other COs then surrounded me and started hitting me with a closed fist. They yelled 'stop resisting' so they could continue the beating."); *id.* ¶ 7; Declarant 62 (Ex. 9) ¶ 3 ("You can only hear them say "stop resisting" when they are the ones who are being physically violent."); Declarant 33 (Ex. 5) ¶ 3 ("Guards often go into inmates' cells and drag them out and tell them 'stop refusing.' This happens all the time if inmates disobey a small rule. The inmates almost always get back into compliance because they don't want trouble. But the C/Os still 'go into action.' They drag the inmates away, handcuff them, pick them up and scream again that the inmate should stop refusing. The inmates say back, 'I'm not refusing.' Before dragging them away, the C/Os will punch the inmates, give knees to the back and spray them with mace"); Declarant 48 (Ex. 7) ¶

[2] These complaints are generally filed with the plaintiff signing the certification required on this Court's form for complaints under the Civil Rights Act, 42 U.S.C. § 1983: "By signing this Complaint, I certify that the facts stated in this Complaint are true to the best of my knowledge, information and belief. I understand that if this certification is not correct, I may be subject to sanctions by the Court."

5; Declarant 39 (Ex. 6) ¶ 9; Declarant 13 (Ex. 3) ¶¶ 1-5; Declarant 12 (Ex. 2) ¶ 3; Second Declarant 18 Declaration (Ex. 3) (p. 6 of attachments to declaration); Declarant 16 (Ex. 3) ¶ 1; *id.* ¶¶ 2-3; Declarant 42 (Ex. 6) ¶ 3; Declarant 69 (Ex. 9) ¶ 6.

Far from rare or isolated, these attacks on detainees reflect violence that is systemic – indeed, epidemic. According to Dr. Jeffrey Schwartz, an expert on corrections and security:

> Taken as a whole, these declarations describe a situation that is hellish, horrific and unconscionable. The declarations I read are not minor complaints nor are they expressions of general dissatisfaction with staff or the Jail. Instead, they describe an environment in which brutality is wide-spread and often involves groups of officers; inmate are beaten viciously and then denied medical care and/or threatened or intimidated into not reporting the beatings; gang members receive favored treatment; staff stand by and watch while inmates beat other inmates; staff sometimes use inmates as enforcers; seriously mentally ill and suicidal inmates are treated with cynical disregard and worse, and sometimes physically abused for asking for help; inmates in isolation are denied the required out of cell recreation time; the grievance system does not work and uniformed staff serve as gatekeepers for medical and mental health services. All of this is maintained by a long-standing and pervasive code of silence that few officers are willing to break.

Schwartz Dec. ¶ 7.

b. Common Contention No. 2

The Jail's use of force policy is woefully deficient, and promotes the use of unnecessary violence in violation of the Eighth Amendment.

Support for Common Contention No. 2

The Use of Force Policy includes Sheriff's Order 11.2.2.0 (Response to Resistance/Use of Force Duties, Notifications, and Reporting Procedures), promulgated by Defendant Dart on May 23, 2011; Sheriff's Order 24.9.16.0 (Use of Force Alert and Early Intervention), promulgated by Defendant Dart on December 7, 2011; and Sheriff's Order 11.2.7.0 (Use of Restraints), promulgated by Defendant Dart on June 1, 2011. *See* Exhibit D to Schwartz Declaration (Ex. 1) The Declaration of Dr. Schwartz analyzes Defendants' use of force policy in detail. Flaws and omissions identified by Dr. Schwartz include, among others: (1) the fact that

the use of force policy is confusing and internally contradictory, (2) the lack of the basic principle that force should only be used to achieve legitimate correctional objectives, (3) the authorization of use of force in situations where force is impermissible; (4) an inadequate system for internal review and investigation of use of force incidents, (5) the lack of a prohibition against provoking detainees into assaultive behavior as a pretext for use of force; and (6) the lack of a prohibition against punching and kicking detainees. Schwartz Dec. ¶¶ 29-40 These and other flaws in the use of force policy contribute to the substantial risk of harm that class members face. Schwartz Dec. ¶¶ 32, 33.

c. Common Contention No. 3

Officers prevent beatings from being captured on camera through methods that include blocking cameras, preventing recording, and beating detainees in areas without cameras (such as elevators).

Support for Common Contention No. 3: Second Declarant 56 (Ex. 8) ¶ 8 ("When inmates refuse housing and officers get ready to beat them up, the officers put on their gloves but don't get their cameras ready. They often don't film beatings with a hand camera or a shoulder camera."); *id.* ¶ 3; Second Declarant 55 Declaration (Ex. 8) ¶ 5 ("Officers also threaten people with "elevator rides." I have seen officers take an inmate to the elevator and they come back bruised up."); Declarant 79 (Ex. 11) ¶ 6 ("I've also witnessed an officer named D. Roach beat an inmate in an elevator. In Division 10, 4D during July or August of 2013, an inmate got into an argument with D. Roach. It was a verbal altercation during which the officer asked the inmate if he wanted to take an 'elevator ride.' The argument happened in the afternoon, during the 3-11 shift. Later, D. Roach and another officer came to the inmate's cell, took him to the

elevator, and beat him up. When he came back, he had a black eye, bruises and a knot on his head."); Declarant 67 (Ex. 9) ¶¶ 4-5; Declarant 62 (Ex. 9) ¶ 3; Declarant 2 (Ex. 1) ¶ 7; Declarant 8 (Ex. 2) ¶¶ 5-6; Declarant 9 (Ex. 2) ¶ 1; Declarant 12 (Ex. 2) ¶¶ 1-4; Declarant 15 (Ex. 3) ¶ 2; Declarant 35 (Ex. 6) ¶ 6; Declarant 45 (Ex. 7) ¶ 4; Declarant 61 (Ex. 9) ¶ 2; Declarant 78 (Ex. 11) ¶ 4.

d. Common Contention No. 4

There is an unlawful pattern and practice at the Jail of Officers physically retaliating and threatening to retaliate against detainees who file grievances, requests, and civil complaints regarding prison conditions.

Support for Common Contention No. 4: Second Declarant 80 Declaration (Ex. 11) ¶ 1 ("I am scared for my life in here because I was beaten bloody by correctional officers and because the officers threatened to do it again and to put me in a coma. I am targeted because I reported the beating I received."); Declarant 67 (Ex. 9) ¶ 4 ("(4) After [the detainee] filed a lawsuit, I saw Ofc. Keating come into our rec time, go up to [him], and begun hitting [his] face with the ball of the tip of the antennae on his radio. Keating was spitting as he was talking and provoking him, basically saying lets fight and calling him a "little bitch". Keating said 'why'd you put that bullshit in on me?'"); Declarant 59 (Ex. 9) ¶¶ 2-5; First Declarant 13 Declaration (Ex. 3) ¶ 6 ; Declarant 35 (Ex. 6) ¶ 4 ("Once they stopped hitting me, CO Williams told me that if I said anything to anybody I would get beat up again."); Declarant 27 (Ex. 4) ¶ 1 ("I'm scared being here, I'm scared telling this but somebody has to do it. I'm scared because of the violence I've witnessed."); Declarant 50 (Ex. 7) ¶ 5 ("The other reason we're not safe here is because C/Os use detainees to discipline other detainees. A black inmate who goes by P.K was accused of reporting on a C/O named Tedesko. Something that Tedesko told another detainee that P.K

"ratted" him out. Then four detainees beat down P.K as punishment for ratting out Tedesko."); Declarant 6 (Ex. 1) ¶ 1; Declarant 8 (Ex. 2) ¶ 7; Declarant 9 (Ex. 2) ¶ 2; Declarant 15 (Ex. 3) ¶ 4; Declarant 37 (Ex. 6) ¶¶ 4-5; Declarant 69 (Ex. 9) ¶ 3; Declarant 72 (Ex. 10) (p. 6 of .attachment to Declaration) (after detainee complained to the United States Department of Justice about violence to a correctional officer, the officer harassed him by saying, "Nice letter, you better watch your back!"); Declarant 78 (Ex. 11) ¶ 6 (Superintendent of Division 10 threatened to send detainee back to Division 9 and "let the other inmates finish [him] off"); *id.* ¶¶ 7-8; Complaint, *Harris v. Carol*, No. 13-C-5470 at 4-6 (N.D. Ill Filed July 31, 2013) (officer retaliated against Harris for a previous fight with a different officer) (Ex. 16); Complaint, *Hughes v. Boutte*, No. 13-CV-05770 at 3 (N.D. Ill Filed Aug 13, 2013) (officers informed rival gang member of a report Hughes made against him charging that the rival hoarded food; rival gang retaliated against Hughes, breaking his leg) (Ex. 17); Complaint, *Lasenby v. Cook County*, No. 13-C-3229 at 3 (N.D. Ill Filed Nov 7, 2013) (officers threatened to file criminal charges if a complaint was filed against the officers) (Ex. 16); Complaint, *Walker v. Cook County*, No. 13-C-5122 at 4, 5, 6, 7 (N.D. Ill Filed Jul 17, 2013) (Ex. 17).

e. Common Contention No. 5

There is an unlawful pattern and practice at the Jail of failing to prevent detainee-on-detainee attacks.

Support for Common Contention No. 5: Divisions 9 and 10 of the Cook County Jail are a free-for-all of detainee-on-detainee attacks for all of the following reasons:

- **Staff do not prevent—and in some cases, affirmatively encourage and instigate—detainee attacks on other detainees.** Declarant 35 (Ex. 6) ¶ 6 ("Sometimes the Cos will ask inmates to go beat up other inmates, in exchange for favors or privileges. Sometimes COs won't break up fights between inmates

or they will let another inmate break it up."); Declarant 43 (Ex. 7) ¶ 6 (Officers told detainees who were fighting to "go ahead, get it over with…"); Declarant 3(Ex. 1) ¶¶ 3-4; *id.* ¶ 9; Declarant 10 (Ex. 2) ¶ 3; Declarant 88 (Ex. 12) ¶ 5; Declarant 64 (Ex. 9) ¶ 2 (Officers were "watching and laughing" as detainees fought); Declarant 78 (ex. 11) ¶ 4; Declarant 84 (Ex. 11) ¶ 2; Jarvis Winfield Declarant 85 (Ex. 11) ¶ 3; Declarant 87 (Ex. 12) ¶ 1; Complaint, *Simmons v. Moreci*, No 11-C-5328 at 5 (N.D. Ill Filed Aug 5, 2011) (Ex. 14); Complaint, *Granville v. Dart*, No. 11-CV-2866 at 7 (N.D. Ill Filed Aug 29,2011) (Ex. 14); Complaint, *Carreon v. Dart*, No. 12 CV 928 at 4 (N.D. Ill Filed Mar 23, 2012) (Ex. 14); Complaint, *White v. Cook County Jail*, No. 12-C-3956 at 4 (N.D. Filed Jan 31, 2013) (Ex.14); Complaint, *Kestian v. Dart*, No. 13-CV-1020 at 5 (N.D. Ill Filed Feb 7, 2013) (Ex. 18); Complaint, *Morris v. Dart*, No 13-C-0190 at 4 (N.D. Ill Filed Jan 10, 2013) (Ex. 18); Complaint, *Green v. Cook County Jail*, No. 13-CV-7052 at 5-6 (N.D. Ill Filed Oct 1, 2013) (Ex. 18); Complaint, *Mitchell v. Cook County Dept. of Corrections*, No. 13-CV-05723 at 5 (N.D. Ill Filed Aug. 15, 2013) (Ex. 18); Complaint, *Reyes v. Dart*, No. 13-C-5009 at 4 (N.D. Ill Filed Jul 12, 2013) (Ex. 18); Complaint, *Whirley v. Pasqua*, No. 13-CV-5938 at 4-5 (N.D. Ill Filed Aug 20, 2013) (Ex.18) ; Complaint, *Barraza v. Dart*, No. 13-CV-3532 at 4 (N.D. Ill Filed May 10, 2013) (Ex. 18).

- **Officers fail to monitor cells.** Declarant 48 (Ex. 7) ¶ 4 ("The other reason we're not safe is because officers sit in the bubble (away from detainees) and do not do anything when fights break out. They let detainees beat on each other. I saw this happen about 2 months ago on 3D during the 3-11 shift. The officers never walk around the deck to check on us when we are in our cells. If two cellmates were fighting there is no way to get help, there is no way to call the C/Os other than banging the check hole (the flap in the cell door they use to deliver our food)."); Declarant 53 (Ex. 8) ¶ 3 (After a detainee threw a light bulb at another detainee and tried to rape him, "it took the officers about 15 minutes before they came into the cell ad finally broke it up. They usually take about that long to do anything about detainee fights."); Declarant 29 (Ex. 5) ¶ 3; Declarant 54 (Ex. 8) ¶¶ 3-4 (After a detainee complained to officers that another detainee was harassing him for oral sex, officers stated that the other inmate "does this all the time." The other detainee was then moved to a cell with an old man who wore diapers. The other detainee then raped the old man.); Declarant 1 (Ex. 1) ¶ 10; Declarant 21 (Ex. 4) ¶ 5; Declarant 58 (Ex. 8) ¶ 6; Declarant 62 (Ex. 9) ¶ 4; Declarant 69 (Ex. 9) ¶ 2.

- **Officers fail to monitor tiers and dayspaces.** Declarant 21 (Ex. 4) ¶ 4 ("About three weeks ago a detainee who goes by 'Menice' beat down an detainee named 'T-mac.' The beating was in the day room and lasted for 7-8 minutes. T-mac was seriously hurt he had to get stitches for injuries. The C/Os watched this beat down from the hallway and did nothing until it was over."); Declarant 40 (Ex. 6) ¶ 4 ("In 2011, during the 7-3 shift, I witnessed an inmate get stabbed about 30 times

by another inmate. The officers left the deck unsupervised, which is typical, because they don't watch over us. This could have been prevented if officers didn't have a blind eye."); Declarant 46 (Ex. 7) ¶ 3; Complaint, *Brown v. Dart*, No.11-C-0064 at 3-4 (N.D. Ill Filed March 8, 2011) (Ex. 14), Complaint, *Pettis v. Barnes*, No 11 C 0519 at 8-9 (N.D. Ill Filed Mar. 10, 2011) (Ex. 14); Complaint, *Thompson v. Cook County Dept. of Corrections*, No. 13-C-0642 at 6 (N.D. Ill Filed Jan 25, 2013) (Ex. 15).

f. Common Contention No. 6

Defendants know of and disregard a substantial risk of harm to detainees in Divisions 9 and 10.

Support for Common Contention No. 6: To prevail against supervisory defendants in a case alleging unconstitutional violence in a prison or jail, plaintiffs must show (1) that plaintiffs face "a substantial risk of serious harm" and (2) that defendants "kn[o]w of and disregard[ ]" that risk. *Miller v. Neathery*, 52 F.3d 634, 639 (7th Cir. 1995).

In this case, evidence of substantial risk of serious harm includes all of the declarations filed with this motion, which show that detainees in Divisions 9 and 10 are exposed to intolerable levels of violence each and every day. As a result of this violence, detainees in these divisions fear—with good reason—that they will be seriously injured, if not murdered, while awaiting trial. Declarant 74 (Ex. 10) ¶ 4 ("I feel scared about the level of violence at the jail, in Divisions 9 and 10. I worry about getting home safe to my 8 year old son and five year old daughter"); Declarant 16 (Ex. 3) ¶ 5 ("Because I've been beaten up very badly, I fear for my life in Division 9."); Declarant 13 (Ex. 3) ¶ 8 ("I live in constant fear of being beaten by officers because its' an ongoing thing."); Declarant 21 (Ex. 4) ¶ 5 ("We are not safe here because the C/Os will beat us or allow other detainees to beat us. The C/Os won't save us."); Declarant 30(Ex. 5) ¶ 7 ("Violence is all in a day's work for the officers here. It seems like some of the officers just come to work to make us miserable and put their hands on us."); Declarant 35 (Ex.

6) ¶ 1 ("This is a dangerous place. It's not about if you will experience violence here, it's about when."); Declarant 41 (Ex. 6) ¶ 1 ("I fear for my life every day."); Declarant 42 (Ex. 6) ¶ 4 ("In Division 9, if officers don't like you, they'll punch and kick or use some kind of physical force against. It happens all the time and I don't feel safe. The officers take it out on us and are violent."); Declarant 45 (Ex. 7) ¶ 13 ("I am afraid of the COs. On any day, they could beat me …"); Declarant 53 (Ex. 8) ¶ 5 ("I fear for my safety and life because there is so much violence in the jail, even in protective custody."); Declarant 50 (Ex. 7) ¶ 1 (staff "use abusive forces on us daily"); Second Declarant 56 Declaration (Ex. 8) ¶ 7 ("I see detainees getting beaten up by officers in Division 9 all the time. I am afraid about what is going to happen to me because of all the violence."); Declarant 59 (Ex. 9) ¶ 1 ("I have been in Cook County for 3 years. I am afraid of the officers and I feel traumatized by their actions. I have never been afraid of another person like this."); Declarant 57 (Ex. 8) ¶ 1 ("[I]t is very common for officers to physically abuse inmates."); Declarant 66 (Ex. 9) ¶ 3 ("I've seen officers lay their hands on inmates many times. Usually it's just because the officer has a problem with the inmate. They will hit the inmate and then they'll say the inmate touched them first."); Declarant 87 (Ex. 12) ¶ 8 ("I see violence every day and I am endangered"); Complaint, *Harris v. Carol*, No. 13-C-5470 at 7-8 (N.D. Ill Filed July 31, 2013) (Ex. 16), Complaint, *Reyes v. Dart*, No. 13-C-5009 at 4 (N.D. Ill Filed Jul 12, 2013) (Ex. 18).

There is substantial evidence that the supervisory Defendants know of disregard this risk of serious harm. First, it would be all but impossible for the superintendents of Divisions 9 and 10 and the Director of the Jail to be unaware of the levels of violence in their divisions. According to Dr. Schwartz: "[H]igh-ranking officials have to have been aware of these matters … [because of] the seriousness of the incidents portrayed in these declarations (stabbings, broken

jaws, etc.) and the frequency with which excessive force situations are occurring, according to the declarations." Schwartz Decl. ¶ 10.

Second, Defendants have been put on notice of the brutality that pervades the Jail through previous litigation, including *United States v. Cook County* and *Duran v. Elrod*, both of which did not succeed in curbing unacceptable levels of violence at the Jail. *See* Complaint ¶¶ 37-45.

Third, discipline reports provide administrators with an important source of information about detainee-on-detainee attacks. For a two-month period, March 30, 2013 to May 31, 2013, there were 152 were for incidents recorded in disciplinary reports involving physical violence. Schwartz Decl. ¶ 9.[3] The frequency of these incidents paints "a picture of a jail that is out of control." *Id.*

Fourth, detainees have also spoken to the Division Superintendents about violence, but their complaints have been rebuffed. Declarant 52 (Ex. 8) ¶ 6 ("I've tried to speak to Superintendent Thomas about violence when he makes rounds. He has said things like 'officers can put their hands on you,' and 'where does the constitution say we're not supposed to be beating?' I've also written to Sheriff Dart about violence in the jail.")

Fifth, the Cook County Board of Commissioners, over which Defendant Preckwinkle presides, has been put on notice as to the brutal violence and constitutional conditions at the Cook County jail by the over 250 lawsuits filed in the last three years against Defendants Dart, Preckwinkle and the Cook County Board, which allege civil rights violations at the jail. During this period, the Cook County Board approved settlements in aggregate of over $9 million to settle the civil rights claims of these plaintiffs. Complaint ¶ 45. Rather than preventing violence before the fact, the Board lets it occur, and writes it off in monetary

[3] Counsel sought incident reports for a longer period, but the County's Freedom of Information Office would not provide them.

settlements once the bones are broken.

Of course, prior to discovery and even initial disclosures, Plaintiffs need not prove a substantial risk of harm or establish Defendants' knowledge thereof. "[T]he court," after all, "should not turn the class certification proceedings into a dress rehearsal for the trial on the merits." *Messner v. Northshore University HealthSystem*, 669 F.3d 802, 811 (7th Cir 2012); *Osada v. Experian Information Solutions, Inc*., 290 F.R.D. 485, 492 (N.D.Ill. 2012) (same). The evidence above is put forward at this stage only to show that the risk of harm faced by Plaintiffs, and Defendants knowledge of such risk, present "*questions* of law or fact common to the class," Fed. R. Civ. P. 23(a)(2) (emphasis added), that lend themselves to common answers, therefore making class-wide adjudication appropriate. To satisfy the commonality requirement, a "common contention . . . must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores*, 131 S.Ct. at 2551. This litigation is ideally suited to proceed as a class action because each class member's claim rises or falls based on whether plaintiffs can establish both a substantial risk of harm and Defendants' knowledge of such a risk.

In light of the common questions identified above, differences among class members with respect to the specific uses of force against them do not undermine the commonality of legal and factual issues in this case. That is true because, as explained above, Plaintiffs will rely on numerous individual incidents of violence not to prove their own individual entitlement to monetary relief, but to prove that there is a pattern of officer-on-inmate and inmate-on-inmate abuse in the Divisions 9 and 10 that shows that there is a substantial risk of severe injury to all

inmates in these divisions. The facts of the individual incidents are equally applicable to the deliberate indifference claim of all members of the proposed class.

The fact that class members in this case suffered various means of assault—some punched, others kicked or choked; some assaulted while standing up, others while handcuffed on the ground; some knocked unconscious on the tiers, others bloodied in the elevators—is immaterial to commonality. *Phipps v. Sheriff of Cook County*, 249 F.R.D. 298, 301 (N.D. Ill. 2008) (certifying class of all detainees needing wheelchairs in the Cook County Jail; commonality exists even though "particular conditions may differ slightly from one cell block to the next"); *Jackson v. Sheriff of Cook County*, No. 06 C 0493, 2006 WL 3718041, at *4 (Dec. 14, 2006) (certifying class of detainees involuntarily subjected to an STD screening at the Cook County Jail; in contesting commonality, the Sheriff relied "too much on select factual determinations that might vary on a case-by-case basis."); *Fonder v. Sheriff of Kankakee County*., No. 12-CV-2115, 2013 WL 5644754, at * 6 (C.D. Ill. Oct. 15, 2013) (rejecting Defendants' argument that a jail strip search class action would "require a fact-bound inquiry into the individual circumstances and facts of each search," thus precluding a finding of commonality). Indeed, "if factual distinctions could preclude findings of commonality and typicality under Rule 23(a), they would be the death knell for class actions challenging the systemic enforcement of an unconstitutional statute." *Sherman ex rel. Sherman v. Township High School Dist. 214*, 540 F. Supp. 2d 985, 992 (N.D.Ill. 2008) (quoting *Brown v. Kelly*, 244 F.R.D. 222, 230 (S.D.N.Y.2007)).

3. Typicality is Satisfied: The Named Plaintiffs' Claims are Representative of Those of the Class at Large.

Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). The standard for determining

typicality is not an identity of interest between the named plaintiffs and the class, but rather a "sufficient homogeneity of interest." *See, e.g., Jones v. Blinziner*, 536 F. Supp. 1181, 1190 (N.D. Ind. 1982) (*citing Sosna v. Iowa*, 419 U.S. 393, 403 n.13 (1975)). "[T]he typicality requirement is liberally construed." *Gaspar v. Linvatec Corp.*, 167 F.R.D. 51, 57 (N.D. Ill. 1996).

In this case, the claims of the Plaintiffs are typical of the class as a whole. Every inmate in Divisions 9 and 10 is at risk of being injured as a result of the unlawful practices that give rise to unrestrained violence in these divisions. Each proposed class representative for the violence claims (Tylon Hudson, Laton Stubblefield, and Angelo Matthews) was subjected to a severe beating in the Cook County Jail, and each class member's claims are based on the same legal theories—deliberate indifference to officer-on-detainee and detainee-on-detainee violence. Complaint ¶¶ 37-145. *See Fonder v. Sheriff of Kankakee County*, No. 12-CV-2115, 2013 WL 5644754, at *6 (C.D. Ill. Oct. 15, 2013) (typicality satisfied where "Plaintiff is challenging the same strip search policy as the class he seeks to represent"); *Olson*, 284 F.R.D. at 411 (typicality satisfied where class representative and members of proposed class had legal mail opened improperly by correctional officers); *Inmates of the Attica Corr. Facility v. Rockefeller*, 453 F.2d 12, 24-25 (2d Cir. 1971) (finding typicality in lawsuit challenging excessive force by guards, despite individual factual differences); *Ingles v. City of New York*, No. 01 Civ. 8279 (DC), 2003 WL 402565, at *5 (S.D.N.Y. Feb. 20, 2003) (same); *Anderson v. Garner*, 22 F. Supp. 2d 1379, 1385 (N.D. Ga. 1997) (finding typicality in prison excessive force case even though "when compared to the Plaintiffs' claims, the unnamed class members may have suffered different injuries under different circumstances . . .").

"Typical," as this Court has stated, "does not mean identical." *Gaspar*, 167 F.R.D. at 57. *See also De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir. 1983) ("The

typicality requirement may be satisfied even if there are factual distinctions between the claims of the named plaintiffs and those of other class members.”), *overruled on other grounds*, *Green v. Mansour*, 474 U.S. 64 (1985); *Muro v. Target Corp*., 580 F.3d 485, 492 (7th Cir. 2009) (same). Thus, the “typicality” requirement is satisfied when the representative’s injuries arise from the same practice affecting the rest of the class, even if factual differences exist. *Streeter v. Sheriff of Cook County*, 256 F.R.D. 609, 612-13 (N.D. Ill. 2009) (certifying class of detainees strip searched upon entry to Cook County Jail, despite the Sheriff’s argument that there were differences in the circumstances of each search “because ‘the likelihood of some range of variation in how different groups of … detainees were treated does not undermine the fact that the claims of each class [member] share a common factual basis and legal theory.’”); *Areola v. Godinez*, 546 F.3d 788, 798 (7th Cir. 2008) (typicality satisfied where plaintiff was in the “same boat” as other Cook County Jail detainees who had been denied crutches); *Parish v. Sheriff of Cook County*, No. 07 4369, 2008 WL 4812875, at *4 (N.D. Ill. Oct. 24, 2008) (certifying class of Cook County Jail detainees who were denied adequate medical care and rejecting the Sheriff’s argument that commonality did not exist because “the named plaintiffs’ claims vary as to the type of illness complained of and the type of medication at issue”); *Bullock v. Sheahan*, 225 F.R.D. 227, 230 (N.D. Ill. 2004) (“[p]otential factual differences” relating to individual searches held insufficient to defeat typicality in a jail strip search case).

4. The Named Plaintiffs Will Fairly and Adequately Protect the Interests of the Classes.

Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4) “This adequate representation inquiry consists of two parts: (1) the adequacy of the named plaintiffs as representatives of the proposed class's myriad members, with their differing and separate interests, and (2) the adequacy of the proposed

class counsel." *Gomez v. St. Vincent Health, Inc*., 649 F.3d 583, 592 (7th Cir. 2011). All Plaintiffs here are represented by counsel experienced in the protection and enforcement of the constitutional and statutory rights of prisoners. Plaintiffs, all of whom remain incarcerated and face an ongoing risk of severe physical injury, each have a strong personal stake in the proceedings that will "insure diligent and thorough prosecution of the litigation." *Rodriguez v. Swank*, 318 F. Supp. 289, 294 (N.D. Ill.1970), *aff'd* 403 U.S. 901 (1971).

a. Absence of Conflict within the Class.

The named Plaintiffs and the class members raise the same claims, giving rise to common questions of fact and law. The class representatives do not have interests antagonistic to the interests of the class. Both representatives and class members have a common interest in ensuring that inmates in Divisions 9 and 10 are protected from savage violence perpetrated and encouraged by officers. There is no suggestion of any collusion between named Plaintiffs and any of the Defendants. Moreover, no conflicts exist that could hinder the named Plaintiffs' ability to pursue this lawsuit vigorously on behalf of the class. The named Plaintiffs will fairly and adequately protect the interests of the class.

b. Adequacy of Representation.

Plaintiffs' counsel are qualified, experienced, and able to conduct the proposed litigation. Plaintiffs are represented by attorneys from the Roderick and Solange MacArthur Justice Center at Northwestern University School of Law and the Uptown People's Law Center. The Roderick and Solange MacArthur Justice Center is a public interest law firm founded in 1985 by the family of J. Roderick MacArthur to advocate for human rights and social justice through litigation. The MacArthur Justice Center became part of Northwestern University School of Law's Bluhm Legal Clinic in 2006. Shapiro Declaration (Ex. 19) ¶ 2.

Prior to joining the MacArthur Justice Center in September 2012, Sheila Bedi served as the deputy legal director of the Southern Poverty Law Center in New Orleans where she represented people who are imprisoned in federal class action litigation challenging abusive prison conditions and worked on policy campaigns aimed at reducing incarceration rates and reforming criminal and juvenile justice systems. Some of her honors include the 2010 The Peter M. Cicchino Award for Outstanding Advocacy in the Public Interest and the 2007 Fannie Lou Hamer Award. Bedi received her LLM from Georgetown University Law Center and her JD, cum laude, from American University. *Id.* ¶ 4.

David Shapiro joined the MacArthur Justice Center in October 2011 after working as a staff attorney for the ACLU's National Prison Project. Shapiro obtained what is believed to be the largest settlement ever in a case involving censorship by a prison or jail and led the first major challenge to Communication Management Units, a new type of federal prison unit designed to radically limit the communications of federal prisoners suspected of links to terrorism. In 2012, he was part of a trial team nominated for the Public Justice "Trial Lawyer of the Year" Award for litigation challenging the segregation of prisoners with HIV in Alabama. Shapiro clerked for the late Hon. Edward R. Becker, Third Circuit Court of Appeals and received his JD from Yale Law School. *Id.* ¶ 3.

Alexa Van Brunt has served since 2010 as an attorney at the MacArthur Justice Center working on cases including litigating on behalf of victims of the Jon Burge police torture scandal, and bringing suits to address such issues as conflicts of interest within the Cook County State's Attorney's Office and the violation of prisoners' rights in Illinois correctional facilities. Van Brunt clerked for the Hon. Myron Thompson, U.S. District Court for the Middle District of Alabama and received her JD, with distinction, from Stanford Law School. *Id.* ¶ 5.

Locke Bowman is the director of the MacArthur Justice Center. Bowman has handled a variety of civil and criminal litigation, including police misconduct litigation, civil suits seeking damages for the wrongfully convicted, suits seeking resources for indigent criminal defendants, and suits on a variety of other topics. Bowman was named an Illinois "Super Lawyer" in 2005, 2006, 2007, 2008, and 2009 for his work in constitutional law and civil rights. He also is a recipient of the "First Defender Award," presented by the First Defense Legal Aid (FDLA); the "Citizens Alert Rev. Willie Baker Award," given by Citizens Alert for contributions toward community justice; the Clarence Darrow Award, given by the Clarence Darrow Commemorative Committee for leadership efforts to reform the death penalty system; and the Illinois Public Defender Association Award for Excellence and Meritorious Service, among other awards and honors. *Id.* ¶ 6.

Alan Mills is the Legal Director of the Uptown People's Law Center and has litigated dozens of civil rights actions brought by prisoners in both federal and state courts. Mr. Mills was lead counsel for the plaintiff class in *Westefer v. Snyder*, a case alleging that prisoners transferred to Tamms Correctional Center were not provided with a hearing which complied with the minimum requirements of due process. The order finding in plaintiffs' favor is reported at 2010 U.S. Dist. LEXIS 72758. (S.D. Ill., July 20, 2010). Some of the cases litigated by Mr. Mills which have resulted in reported decisions include: *Nelson v. Miller*, 570 F.3d 868 (7th Cir. 2009) (RLUIPA claim regarding denial of religious diet to prisoner at Tamms); *Pearson v. Welborn*, 471 F.3d 732 (7th Cir. 2006) (retaliation claim brought by prisoner at Tamms); *Dole v. Chandler*, 438 F.3d 804 (7th Cir. 2006) (reversal of summary judgment entered against prisoner plaintiff for failure to exhaust, in a case arising out of Menard); *Harper v. Albert*, 400 F.3d 1052 (7th Cir. 2005) (affirming judgment against plaintiff in an excessive use of force case arising

from Menard); *Filmore v. Page*, 358 F.3d 496 (7th Cir. 2004) (reversing, in part, judgment against prisoner in an excessive use of force case arising from Menard); *Thomas v. Ramos*, 130 F.3d 754 (7th Cir. 1997) (affirming summary judgment in a due process case). *Id.* ¶ 7.

5. Plaintiffs Satisfy Fed. R. Civ. P. 23(b)(2): This Case Seeks Declaratory and Injunctive Relief from Policies and Practices that Place the Entire Proposed Class at Risk of Brutal Violence.

The final requirement for class certification is satisfaction of at least one of the subsections of Rule 23(b). Subsection (b)(2) requires that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Fed. R. Civ. P. 23(b)(2). Courts have repeatedly held that civil rights class actions are the paradigmatic 23(b)(2) suits, "for they seek classwide structural relief that would clearly redound equally to the benefit of each class member." *Marcera v. Chinlund*, 595 F.2d 1231, 1240 (2d Cir.), *vacated on other grounds*, 442 U.S. 915 (1979); *see also Johnson v. General Motors Corp.*, 598 F.2d 432, 435 (5th Cir. 1979).[4] As stated in the leading treatise on class actions:

> Rule 23(b)(2) was drafted specifically to facilitate relief in civil rights suits. Most class actions in the constitutional and civil rights areas seek primarily declaratory and injunctive relief on behalf of the class and therefore readily satisfy Rule 23(b)(2) class action criteria.

A. Conte & H. Newberg, Newberg on Class Actions § 25.20 (4th ed. 2002). In addition, the Seventh Circuit has recognized that prisoners, "by reason of ignorance, poverty, illness, or lack of counsel may not... [be] in a position to seek ... [relief] on their own behalf," and that this factor militates in favor of class certification. *United States ex rel. Morgan v. Sielaff*, 546 F.2d 218, 222 (7th Cir. 1976).

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[4] Plaintiffs do not seek class certification for any damages claims. While Plaintiff Hudson seeks damages for his individual injuries, he represents a class seeking purely declaratory and injunctive relief.

Injunctive challenges to prison and jail conditions routinely proceed as class actions. *See, e.g., Brown v. Plata*, 131 S.Ct. 1910, 1923 (2011); *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 374 (1992); *Jones 'El v. Berge*, 374 F.3d 541 (7th Cir. 2004); *Bruscino v. Carlson*, 854 F.2d 162, 164 (7th Cir. 1988); *Hadi v. Horn*, 830 F.2d 779, 781 (7th Cir. 1987); *French v. Owens*, 777 F.2d 1250, 1251 (7th Cir. 1985); *Jones v. Diamond*, 519 F.2d 1090, 1097 (5th Cir. 1975) ("Realistically, class actions are the only practicable judicial mechanism for the cleansing reformation and purification of these penal institutions."); *Baby Neal*, 43 F.3d at 58 (noting that subsection (b)(2) "is almost automatically satisfied in actions primarily seeking injunctive relief"); *Bradley v. Harrelson*, 151 F.R.D. 422, 427 (M.D. Ala. 1993) (stating that subsection (b)(2) "is particularly applicable to suits such as the one sub judice which involve conditions of confinement in a correctional institution."). Here, the practice of high-level officials turning a blind eye to brutality inflicted on class members and failing to adopt the policies and practices necessary to ensure that there is not a pattern of excessive force in Divisions 9 and 10 places all class members at risk of grave physical harm.

B. With Regard to the Solitary Confinement Claims, The Proposed Class Meets All of the Requirements for Maintenance of A Class Action.

Plaintiffs Jermaine Brooks and Anton Carter also seek to represent the proposed class with regard to their solitary confinement claim. Detainees in Tier SI ("Special Incarceration") in Division 9, Tier 1F in Division 9, and the Segregation Tier in Division 10 (collectively, "the Solitary Confinement Tiers") are all subjected to solitary confinement—the practice of isolating detainees in their cells for 23 or more hours a day. All class members face a risk of being locked in the solitary confinement tiers, both because these tiers are used or disciplinary purposes, and because the reasons for throwing detainees into solitary confinement are often trivial or pretextual. *See* Declarant 11 (Ex. 2) ¶ 5 ("They put us in the hole for any little thing-like talking

back to the C/O, covering your chuck hole, or having a pen in your cell."); Declarant 28 (Ex. 5) ¶ 5 ("[O]fficers frequently provide known false information concerning detainee-officer altercations. As a matter of fact, the officers prepare disciplinary reports to cover-up their physical abuse of detainees.")

The numerosity and adequacy of representation requirements for class certification, *see* Fed. R. Civ. P. 23(a)(1) & (4), are met with regard to the solitary confinement claim for the same reasons these requirements are met with regard to the violence claim—prospective class counsel, and the size of the class, are the same. Commonality, typicality, and the requirements of Federal Rule of Civil Procedure 23(b)(2) are discussed below.

1. Commonality and Typicality Are Satisfied: The Class Representatives and Class Members Suffer Common Deprivations that Raise Common Questions of Law and Fact.

All members of the proposed class contend that conditions in the Solitary Confinement Tiers

- **Detainees are locked down and left alone in their cells except for one-hour periods. The one-hour periods occur rarely, and certainly less than once every 24 hours. During their one hour of out of cell time, detainees pace alone in a day space, where they have virtually no opportunity to exercise.** Declarant 11 (Ex. 2) ¶ 5 ("When we are in the hole, we are locked down for 23-73 hours a day with no shower and no time to exercise or use the phone."); Declarant 74 (Ex. 10) ¶ 6 ("We had to walk around in full shackles-that means both handcuffs and leg shackles with a chain connecting the cuffs and leg shackles. That makes it impossible to move or exercise. I have bruises from the leg shackles, everyone from 1F does."); Declarant 1 (Ex. 1) ¶ 9; Declarant 45 (Ex. 7) ¶ 7; Declarant 47 (Ex. 7) ¶ 2; Declarant 61 (Ex. 9) ¶ 4; Declarant 63 (Ex. 8) ¶ 4; Declarant 89 (Ex. 12) ¶ 2

- **Conditions are filthy and unsanitary.** First Declarant 74 Declaration (Ex. 10) ¶ 7 ("It's in the basement. My cell flooded with sewage three times while I was in SI. Once time, the sewage seeped outside into SI from the cells. Even though the cells are a step down, the whole step got overflowed. It even flowed out of SI into the dispensary and boulevard (main corridor). Every time this happened, I was kept in my cell for three hours. The sewage smells like feces, and you see bugs crawling in it. Usually, officers make us clean it up ourselves. They didn't even give us a shower afterwards."); Declarant 45 (Ex. 7) ¶ 7 ("Seg is inhumane, cruel,

and unusual. It feels like being in a dungeon. I was in SI from March to May. I was kept in a windowless basement for 3 months. Raw sewage would come out of a drain."); Declarant 11 (Ex. 2) ¶ 5 ("The hole in Division 10 is filthy. It is covered with shit and piss. They never clean or mop. It smells like shit and piss. It is infested with rats and roaches."); Declarant 20 (Ex. 4) ¶ 2 ("I was in seg in Division 10 about a month ago. I was sent there in December 2013. The water in seg is dirty-you see things floating in it."); Declarant 1 (Ex. 1) ¶¶ 8-9.

- **Detainees suffer emotionally as those in neighboring cells descend into psychosis, demonstrating such behaviors as screaming and throwing feces. .** First Declarant 74 Declaration (Ex. 10) ¶ 8 ("I have been told by a doctor that I have schizophrenia, ADHD, depression, anxiety and sleeping problems. Being in SI was extremely stressful for me and would be for anyone."); Declarant 18 Declaration (Ex. 3) ¶ 5 ("ABO will make you go crazy if you're back there long enough. You're all by yourself all the time. I would just pace back and forth in my cell. Sometimes I would scream and bang to wake everybody up because there was no one to talk to. Lots of people do the same thing, and it makes it impossible to sleep."); *id.* ¶ 12; Declarant 29 (Ex. 5) ¶ 4 ("Some of the guys in there have been in seg for 6 or 9 months even for minor infractions. Some of these guys go crazy and throw their feces and urine at other inmates in segregation."); Declarant 73 Declaration (Ex. 10) ¶ 2 ("People are so alone in 1F, they start throwing feces, spitting on people, insert things into their butts and cut their wrists."); Declarant 20 (Ex. 4) ¶ 2 ("Detainees in 10 seg sometimes throw feces and piss at other detainees.").

Plaintiffs, in short, bring a unified challenge to common conditions and policies—the very sort of systemic challenge that is the sine qua non of an injunctive class action.

2. Federal Rule of Civil Procedure 23(b)(2) Is Satisfied

Because any class member may be thrown into one of the Solitary Confinement Tiers in Divisions 9 and 10, the solitary confinement claims are "generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Fed. R. Civ. P. 23(b)(2).

II. THE COURT SHOULD DESIGNATE PLAINTIFFS' COUNSEL AS CLASS COUNSEL UNDER RULE 23(g)(1).

Federal Rule of Civil Procedure 23(g) requires that the district court appoint class counsel for any class that is certified. Fed. R. Civ. P. 23(g)(1). The attorneys appointed to serve as class counsel must "fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B). The appointed class counsel must be listed in the Court's class certification order. Fed. R. Civ. P. 23(c)(1)(B).

The Rule identifies four factors that the Court must consider in appointing class counsel: (1) "the work counsel has done in identifying or investigating potential claims in the action;" (2) "counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;" (3) "counsel's knowledge of the applicable law;" and (4) "the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A). The undersigned attorneys satisfy each of these requirements. First, Plaintiffs' counsel have worked for many months in identifying and investigating the claims in the action, through interviews with the named Plaintiffs, with scores of other putative class members and with other potential fact witnesses, consultation with potential experts, review of court records, and other extensive factual and legal research. Shapiro Declaration (Ex. 19) ¶ 8. With regard to the second and third factors, and as is set forth in the Shapiro Declaration, Plaintiffs' counsel have significant experience in handling class actions as well as other complex litigation, including the very kind of matters asserted in this case, namely, civil rights actions on behalf of incarcerated persons; and they are knowledgeable with regard to the applicable law. *Id.* ¶¶ 3-7.

Finally, Plaintiffs' litigation team includes several highly experienced lawyers who have dedicated and will continue to commit major staffing and material resources to the representation of this class. *Id.* ¶ 9. Plaintiffs' counsel have built a strong, effective working relationship with

the named Plaintiffs and several other members of the proposed class. *Id*. Counsel are prepared to retain highly qualified experts and to undertake the other necessary litigation expenses on behalf of the Plaintiffs and the proposed class. Shapiro Declaration *Id*. In sum, Plaintiffs' counsel fully satisfy the criteria for class counsel set forth in Rule 23(g) and Plaintiffs respectfully request that the Court appoint them as such.

CONCLUSION

For the foregoing reasons, the Court should grant the motion for class certification and appoint the undersigned attorneys as Class Counsel.

DATED: February 27, 2014

s/David M. Shapiro

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that he filed the foregoing document via the Court's CM/ECF system and served a copy on the individuals in the attached service list, on February 27, 2014.

/s/ David Shapiro

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