

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

_____)	
JOHN HICKS, et al.,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION
)	No. 2:09-cv-155-WKW
)	
GARY HETZEL,)	
Warden of Donaldson)	
Correctional Facility, et al.,)	
)	
Defendants.)	
_____)	

**PLAINTIFFS' BRIEF IN SUPPORT OF MOTION
FOR PARTIAL SUMMARY JUDGMENT ON FAILURE TO PROTECT CLAIM**

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INTRODUCTION

This motion presents the issue of whether the prevalence of inmate-on-inmate violence and resulting traumatic injuries to men at Donaldson Correctional Facility violates the Eighth Amendment. The facts relevant to this motion are not in dispute. There is no dispute that stabbings and beatings have left men at Donaldson with slit throats, punctured lungs, ruptured organs, loss of vision, paralysis, head trauma, disfigurement, and other injuries. It cannot be disputed that the number and severity of injuries to inmates due to violence at Donaldson exceeds that described in any case considered by the Eleventh Circuit Court of Appeals in the last twenty years. It is further undisputed that the level of violence at Donaldson is not new, but has been ongoing since at least 2006.

The Plaintiffs further show herein that the State's actions and inactions have contributed to the dangerous environment at Donaldson. Specifically, Plaintiffs show: that the Department added one hundred inmates to Donaldson between 2007 and 2009, even though the prison was already filled beyond capacity; that the Department packed over 600 men into densely-populated open dorms, supervised, at times, by only two roving officers; that in another area of the prison, three men have been confined to 7 x 10-foot cells designed for two men; and that Donaldson lacks a grievance procedure - common in many prisons - that would enable

inmates to communicate a fear of harm without being seen by other inmates. Plaintiffs also show herein that the State of Alabama has failed to provide appropriate staff for a prison with Donaldson's size and mission. As a direct consequence thereof, inmates have been able to: leave their assigned cellblocks in large numbers to roam to other areas of the prison, undetected; amass significant quantities of serious lethal weaponry, including knives, ice picks, hacksaw blades and other weapons; access knives and stab other inmates even in the most "secure" areas of the facility; and engage in the prison's flourishing trade in drugs and other contraband.

There is no dispute that, after being placed on notice of the foregoing facts, the Department of Corrections failed to accurately monitor the level of violence at Donaldson, and even misrepresented the level of violence at the prison to the public. The Defendants' post-lawsuit modifications to conditions are positive, but insufficient to remedy the serious risk to prisoners' safety. As this Court made clear in Laube v. Haley, 234 F. Supp. 2d 1227, 1251 (2002) (finding female prisoners were at risk of harm in conditions lawsuit), remedial efforts - even those made by "dedicated public servants" - do not negate liability where the measures "have had negligible impact on the massive danger posed to inmates." Here, as in

Laube, court-ordered relief is necessary. Plaintiffs ask the Court to grant their motion for summary judgment.

STATEMENT OF FACTS

I. PARTIES

The Plaintiffs are incarcerated at Donaldson, have been assaulted while at the prison, and fear future injury due to the high level of violence there. Plaintiff Charles Malec was asleep in his bunk when an inmate wielding a razor slashed him down the side of his face from his temple to his chin.¹ Plaintiff James Taylor was stabbed by a prisoner with an inmate-made knife.² Plaintiff Gregory Wynn was assaulted by an officer.³ Former plaintiff John Hicks lost vision in one eye due to an assault at Donaldson.⁴ Plaintiffs filed this suit on behalf of themselves and a class of similarly situated persons,

¹ See **Ex. 1**, Summary Chart, p. 23; Ex. 1, Incident Report, July 23, 2008, Hetzel 12551-12554; Malec. Depo. [Ex. 9 to Doc. No 81] at 80:10-19; 81:13-23; 82:1-87:7. Exhibit 1 contains a chart listing injuries to inmates from 2006-2009 and includes supporting ADOC incident reports in chronological order.

² See Ex. 1, Summary Chart, p. 4; Ex. 1, Incident Report, Sept. 6, 2006, ADOC I 351-54; Taylor Depo. [Ex. 11 to Doc. No. 81] at 295:13-297:18.

³ See Wynn Depo. [Ex. 5 to Doc. No. 81] at 143:10-146:3.

⁴ See Ex. 1, Summary Chart, p. 17; Ex. 1, Incident Report, May 18, 2008, Hetzel 10580-10587; Hicks Decl. ¶¶ 5-12 [Ex. 26 to Doc. No. 81]. Mr. Hicks's claim for injunctive relief was mooted by his release from prison. See Order, Doc. No. 56.

alleging that conditions at Donaldson expose them to a serious risk of harm.

Defendant Gary Hetzel is Donaldson's chief Warden.⁵ Defendants Warden Gordy⁶ and Warden Edwards⁷ are assistant wardens. Defendant Allen is the Commissioner of the Department of Corrections and is responsible for ensuring that Alabama's prisons meet constitutional standards.⁸ Defendant Bob Riley is

⁵ Warden Hetzel has been employed at Donaldson since October 15, 2005, and became chief warden on January 2, 2008. See Hetzel Depo. [Ex. 4 to Doc. No 81] at 8:15-17; 9:9-18. He is responsible for "the complete operation of Donaldson Correctional Facility." Id. at 9:19-10:4.

⁶ Warden Gordy has been an assistant warden at Donaldson since November 2007 and was a captain at the prison from 2004-2007. See Gordy Depo. 9:20-23, 10:1-11 (**Ex. 2**). He is responsible for several areas of the prison, including the segregation units (id. at 11:20-23, 21-4), and mental health units. Id. at 16:8-13. Warden Gordy performs security inspections in these areas. Id. at 21:9-16. He also addresses complaints from prisoners with mental illness (id. at 15:12-15), and prisoners in segregation. Id. at 14:1-3.

⁷ Warden Edwards has been an assistant warden at Donaldson for two years. See Edwards Depo. [Ex. 22 to Doc. No. 81] at 8:5-8. In Warden Hetzel's absence, Warden Edwards has responsibility for the prison. Id. at 7-15. His responsibilities are "total operations of the facility" and he oversees "security." Id. at 9:5-9, 14-16, 10:2-6. Warden Edwards assigns officers to ensure that each shift can carry out the "day-to-day operations of the facility." Id. at 11:7-13.

⁸ See Farmer v. Brennan, 511 U.S. 825, 1983 (1994) ("a prison official's duty under the Eighth Amendment is to ensure 'reasonable safety' . . .")(internal citations omitted) See also Laube, 234 F. Supp. 2d at 1253 (requiring governor, commissioner and warden to "take immediate affirmative steps to redress the unconstitutionally unsafe conditions" at Tutwiler prison); Gates v. Collier, 501 F.2d 1291, 1294-95, 1322 (5th

the Governor and must ensure that the Department is sufficiently funded to comply with the Eighth Amendment.⁹ Defendants are sued in their official capacities for injunctive relief only.¹⁰

II. GENERAL DESCRIPTION OF DONALDSON CORRECTIONAL FACILITY

Donaldson is a maximum security prison with a current population of 1,547 men.¹¹ The prison houses persons deemed "behaviorally difficult to manage," several hundred men sentenced to life without parole, and inmates with lower security classifications.¹² Currently, 620 men are housed on the prison's south side in five, separately enclosed open

Cir. 1974) (upholding grant of injunctive relief against the governor, state penitentiary board and superintendent in suit alleging unconstitutional conditions, including inadequate protection from violence).

⁹ See Ala. Code §§ 14-1-15 to 14-1-18 (vesting in the Governor all duties and responsibilities for the state prison system previously held by the Board of Corrections); Graddick v. N.H. Newman, 453 U.S. 928, 931 (1981) (recognizing that by Alabama law "responsibility for the maintenance of Alabama prisons . . .rests" with the Governor); Laube, 234 F. Supp. 2d at 1253.

¹⁰ See Amend. Compl. ¶¶ 16-20.

¹¹ See Count Sheet, Jan. 8, 2010, Hetzel 25627 (**Ex. 3**).

¹² See <http://www.doc.state.al.us/facility.asp?id=4> (last visited 2/5/2010); see also Jeffrey Blackwood Decl. ¶ 4 (**Ex. 19**)(stating that he was a minimum security inmate when he arrived at Donaldson).

dormitories (K,L,M,N, and O).¹³ About 566 additional men are housed in general population cell blocks (A,B,C,D,X, and Y).¹⁴ The remaining men are housed in segregation cells.¹⁵

III. INMATE-ON-INMATE ASSAULTS AT DONALDSON AND DEFENDANTS' KNOWLEDGE THEREOF.

The Department has characterized the incidence of inmate-on-inmate violence at Donaldson as "rather low."¹⁶ Warden Gordy even called it "acceptable."¹⁷ The Department's own records, however, reveal otherwise. (See Exhibit 1). In January 2006, Arthur Scruggs was found lying in a pool of blood inside a cell after being stabbed multiple times; his death was ruled a homicide.¹⁸ Also in 2006:

- a man was found covered in blood with a head injury and was taken by ambulance to Carraway Hospital;¹⁹

¹³ See Inmate Count Sheet, Jan. 8, 2010, Hetzel 25627; (Ex. 3); Photographs of south side dormitory (fall 2009), Hetzel 21437-40 (**Ex. 4a**).

¹⁴ See Ex. 3; Photographs of triple-bunked cells (2007) (**Ex. 4b**).

¹⁵ See Ex. 3.

¹⁶ See ADOC Legal Dep't Letter, July 27, 2007 (**Ex. 5**, p. 1).

¹⁷ See Gordy Depo. 78:21-23 (Ex. 2) ("[D]o we have an excessive level of violence? By no means at all do we have an excess level of violence.").

¹⁸ See Ex. 1, Summary Chart, p. 1; Ex. 1, Incident Report, Jan. 1, 2006, ADOC II 54-55.

¹⁹ See Ex. 1, Summary Chart, p. 3; Ex. 1, Incident Report, July 29, 2006, ADOC I 319, 326-28.

- a man had a bleeding puncture wound to the chest and was taken to Carraway Hospital;²⁰
- a man was stabbed in the stomach with an ice pick;²¹
- a man was found lying in the doorway of a cell, bleeding from a stab wound to his neck, and was taken by ambulance to UAB hospital;²²
- a man was raped at knifepoint;²³
- a man who was stabbed had blood "spurting" from his arm and was taken to the hospital by ambulance;²⁴
- a man was repeatedly stabbed with a 10-inch knife and taken by ambulance to the hospital;²⁵
- a man suffered a punctured lung and nerve damage after being stabbed with an inmate-made knife;²⁶

²⁰ See Ex. 1, Summary Chart, p. 3; Ex. 1, Incident Report, July 31, 2006, ADOC I 329 (noting "a puncture wound" to the chest that was "bleeding"), ADOC I 330 (noting transport to Carraway Hospital).

²¹ See Ex. 1, Summary Chart, p. 3; Ex. 1, Incident Report, Aug. 1, 2006, ADOC I 334 (stating that inmate was "stuck" in the abdomen), ADOC 335 (noting that inmate claimed to be stabbed "with an ice pick").

²² See Ex. 1, Summary Chart, p. 3; Ex. 1, Incident Report, Aug. 12, 2006, ADOC I 343 (stating that inmate was found lying in doorway bleeding from stab wound to neck), ADOC I 344 (stating that inmate was taken to UAB hospital).

²³ See Ex. 1, Summary Chart, p. 4; Ex. 1, Incident Report, Sept. 1, 2006, ADOC I 336. See also ADOC I 337-340 (remainder of incident report).

²⁴ See Ex. 1, Summary Chart, p. 4; Ex. 1, Incident Report, Sept. 14, 2006, ADOC I 359. See also ADOC I 360-66 (remainder of incident report).

²⁵ See Ex. 1, Summary Chart, p. 5; Ex. 1 Incident Report, Sept. 26, 2006, ADOC I 367. See also ADOC I 376 (photos).

- a man was found unconscious after being stabbed and was thereafter confined to a wheelchair for over a year;²⁷
- two men were rushed to the hospital by ambulance after a stabbing altercation.²⁸

In the first six months of 2007, one man was stabbed and suffered a punctured liver;²⁹ a second was hospitalized after being found on the floor, stabbed and covered in blood;³⁰ a third was taken to the hospital with numerous stab wounds to his head, chest, and back;³¹ a fourth was hospitalized after he was found, on the floor, bloodied, and unable to speak, with obvious head

²⁶ See Ex. 1, Summary Chart, p. 5; Ex. 1, Incident Report, Nov. 11, 2006; Leo Beverly Afft. (**Ex. 6**).

²⁷ See Ex. 1, Summary Chart, p. 6; Ex. 1, Incident Report, Nov. 16, 2006, ADOC II 40 (stating that Rogers was found "passed out" and "stabbed" and was taken by ambulance to the hospital); John Rogers Afft. (**Ex. 7**)(stating that he was confined to a wheelchair following the incident).

²⁸ See Ex. 1, Summary Chart, p. 6; Ex. 1, Incident Report, Nov. 23, 2006 at ADOC I 402-10.

²⁹ See Ex. 1, Summary Chart, p. 7; Ex. 1, Incident Report, Jan. 29, 2007, ADOC I 421 (stating that Crowe was "bleeding profusely" and had "stab wounds"); Patrick Crowe Depo. [Ex. 7 to Doc. No. 81] at 129:6-21 (describing injuries).

³⁰ See Ex. 1, Summary Chart, p. 7; Ex. 1, Incident Report, Jan. 29, 2007, ADOC I 421.

³¹ See Ex. 1, Summary Chart, p. 7; Ex. 1, Incident Report, Feb. 7, 2007, ADOC I 710. See also ADOC I 430.

wounds;³² a fifth was airlifted to the hospital after his throat was slashed;³³ a sixth was taken for emergency care after being stabbed through the hand;³⁴ and a seventh was hospitalized with stab wounds to his chest and face.³⁵

In March 2007, Plaintiffs' counsel sent Commissioner Allen a letter expressing concern about conditions at Donaldson and listing a death and over thirty assaults.³⁶ The Commissioner's attorney responded that the level of violence was "not rampant, but rather low."³⁷ The assaults continued. From July to September 2007, at least eight more men were transported to the hospital for emergency medical care following stabbings or

³² See Ex. 1, Summary Chart, p. 8; Ex. 1, Incident Report, May 7, 2007, ADOC I 744, 748.

³³ See Ex. 1, Summary Chart, p. 8; Ex. 1, Incident Report, May 13, 2007, ADOC I 448 (stating that inmate had been "stabbed several times"), ADOC I 449 (stating that "lifesaver aircraft was needed").

³⁴ See Ex. 1, Summary Chart, p. 9; Ex. 1, Incident Report, June 13, 2007, ADOC 793, 801 (stating that inmate was "stabbed through his hand"), ADOC I 802 (stating that inmate was transported to hospital).

³⁵ See Ex. 1, Summary Chart, p. 9; Ex. 1, Incident Report, June 15, 2007, ADOC at 1051 (stating that inmate was stabbed four times with a prison-made weapon), ADOC I 1052 (stating that inmate was admitted to hospital).

³⁶ See SCHR Letter to Comm'r Allen, March 15, 2007 (**Ex. 8**).

³⁷ See Letter from Attorney for Comm'r Allen, July 27, 2007 (Ex. 5, p. 1).

assaults.³⁸ One man, Hoover Reynolds, sustained a broken jaw that required two surgeries to repair.³⁹ Another was stabbed, "slipped in his own blood," and was stabbed again, suffering wounds that required emergency medical care;⁴⁰ another was "bleeding profusely from the face" and was taken to the hospital.⁴¹ In May 2008 alone, five men were rushed to the emergency room with traumatic injuries.⁴² A chart cataloging the

³⁸ See Ex. 1, Summary Chart, p. 10-12; Ex. 1, Investigative Report, **July 29, 2007**, ADOC I 812 (noting "stab wounds to the back and left leg" requiring "transportation to the UAB Hospital"); Hoover Reynolds Decl. and ADOC Disciplinary Report (**Ex. 29**); Ex. 1, Investigative Report, **Aug. 7, 2007**, ADOC I 833 (noting that inmate was transported to UAB Hospital after an inmate stabbed him "in the top of his head and face with a long silver colored knife"); Ex. 1, Investigative Report, **Aug. 8, 2007**, ADOC I 876 (stating that one inmate had "multiple stab wounds" and another was transported to UAB Hospital "due to the seriousness of his injuries"); Ex. 1, Investigative Report, **Aug. 21, 2007**, ADOC I 987, 989 (noting lacerations to eye requiring transport to Carraway Hospital); Ex. 1, Investigative Report, **Sept. 1, 2007**, ADOC I 1008 (stating that inmate was stabbed in chest and shoulder and required transport to hospital); Ex. 1, Investigative Report, **Sept. 13, 2007**, ADOC I 901 (stating that inmate was stabbed four times in the back and required transport to Carraway Hospital); Ex. 1, Investigative Report, **Sept. 13, 2007**, ADOC 924 (stating that inmate was stabbed 8 times in the back and required transport to Carraway Hospital).

³⁹ See Hoover Reynolds Decl. and Disciplinary Report (Ex. 29).

⁴⁰ See Ex. 1, Summary Chart, p. 10; Ex. 1, Investigative Report, Aug. 7, 2007, ADOC I 833.

⁴¹ See Ex. 1, Summary Chart, p. 11; Ex. 1, Investigative Report, Aug. 21, 2007, ADOC I 987, 989.

⁴² See Ex. 1, Summary Chart, p. 17-19; Ex. 1, Incident Reports: May 18, 2008, Hetzel 10580; May 27, 2008, Hetzel 10829;

injuries to prisoners from 2006-2009 is attached as Exhibit 1.⁴³

The following is a non-exhaustive list of some, more recent injuries:

Names unknown: On January 26, 2010, two inmates were involved in a physical altercation.⁴⁴ One was stabbed several times. The other's nose was bitten off and had to be surgically re-attached.⁴⁵

Names unknown: In the second week of January 2010, there was a stabbing in K-dorm, and blood covered the injured man's clothes and the floor.⁴⁶

Christopher Banks: On November 23, 2009, Mr. Banks was hit in the face with a lock in a sock, causing a broken tooth that required dental care.⁴⁷

Billy Randolph: On November 20, 2009, an officer saw "an inmate walking down the southside blacktop bleeding."⁴⁸ The man "collapsed."⁴⁹ A sergeant "informed the rovers that he

May 30, 2008, Hetzel 10959-60 (noting that two men were sent to emergency room); May 30, 2008, Hetzel 10972.

⁴³ In discovery, Plaintiffs obtained incident reports dated April 2008-December 2009. Plaintiffs do not have incident reports from January 2010 forward. Upon information and belief, Plaintiffs have not been provided all incident reports for December 2009 or for the years 2006-2007.

⁴⁴ See Gregory Wynn Decl., Feb. 2, 2010, ¶ 9 (**Ex. 9**).

⁴⁵ See id.

⁴⁶ See Charles Malec Decl., Feb. 2, 2010, ¶ 6 (**Ex. 10**).

⁴⁷ See Ex. 1, Summary Chart, p 46; Ex. 1, Incident Report, Hetzel 22156.

⁴⁸ See Ex. 1, Summary Chart, p. 47; Ex. 1, Incident Report Hetzel 22189.

⁴⁹ See Ex. 1, Summary Chart, p. 47; Ex. 1, Incident Report Hetzel 22197.

needed medical staff and a gurney immediately,"⁵⁰ while an officer "attempted to control the bleeding."⁵¹ Mr. Randolph was rushed to the hospital.⁵² The weapon used was an 8-inch long, inmate-made knife.⁵³

Nathaniel Holmes: On October 29, 2009, an inmate was seen running, "bloody from what appeared to be stab wounds."⁵⁴ He had a six-inch laceration to the neck and deep upper and lower lip lacerations.⁵⁵

Jamal Patterson: On October 5, 2009, Jamal Patterson was "cut across the left side of his face with a razor blade."⁵⁶ A doctor sutured "the large laceration to [inmate's] left jaw."⁵⁷

Mario Sanford: On October 3, 2009, a prisoner was seen attempting to stab another man with an ice pick.⁵⁸ The injured man had stab wounds to the neck.

⁵⁰ See Ex. 1, Summary Chart, p. 47; Ex. 1, Incident Report Hetzel 22189.

⁵¹ See Ex. 1, Summary Chart, p. 47; Incident Report, Hetzel 22191.

⁵² See Ex. 1, Summary Chart, p. 47; Incident Report, Hetzel 22189.

⁵³ See id.

⁵⁴ See Ex. 1, Summary Chart, p. 46; Incident Report, Hetzel 21899.

⁵⁵ See id.

⁵⁶ See Ex. 1, Summary Chart, p. 46; Ex. 1, Incident Report, Hetzel 22047.

⁵⁷ See Ex. 1, Summary Chart, p. 46; Ex. 1, Incident Report Hetzel 22041.

⁵⁸ See Ex. 1, Summary Chart, p. 45; Ex. 1, Incident Report Hetzel 22062.

Marcus Spangler: On September 25, 2009, an officer saw an inmate in the segregation unit "free from his handcuffs," striking Mr. Spangler in the chest with a knife.⁵⁹

Christopher Well: On September 14, 2009, Mr. Well was carried to the infirmary "via stretcher" with "multiple stab wounds."⁶⁰

Charles Reynolds: On August 17, 2009, an unknown caller telephoned the warden's office to report that a prisoner had been stabbed in a particular cellblock.⁶¹ Officers found Reynolds in that cell block.⁶² He was locked in a cell, bleeding from multiple stab wounds, and had been calling for an officer for 45 minutes.⁶³ A stretcher took Reynolds to the infirmary where he reported that "inmates came into his cell, held him down, and stabbed him."⁶⁴ Reynolds had lacerations to his head, arm, chest, groin and thigh and was at "risk for hemodynamic instability."⁶⁵ Oxygen was administered and he was rushed by ambulance to Cooper Green Hospital.⁶⁶

Damon Magwood: On August 3, 2009, Magwood was punched in the face, hit a steel bedrail, and fell unconscious.⁶⁷ He

⁵⁹ See Ex. 1, Summary Chart, p. 45; Ex. 1, Incident Report Hetzel 21885.

⁶⁰ See Ex. 1, Summary Chart, p. 45; Ex. 1, Incident Report Hetzel 21833.

⁶¹ See Ex. 1, Summary Chart, p. 44, Ex. 1, Incident Report Hetzel 21662; Charles Reynolds Decl. (**Ex. 24**).

⁶² See id.

⁶³ See Charles Reynolds Decl. ¶ 5-6 (**Ex. 24**).

⁶⁴ See Ex. 1, Summary Chart, p. 44, Ex. 1, Incident Report Hetzel 21662.

⁶⁵ See Ex. 1, Summary Chart, p. 44, Ex. 1, Incident Report Hetzel 21665.

⁶⁶ See id.

⁶⁷ See Ex. 1, Summary Chart, p. 43; Ex. 1, Incident Report Hetzel 21241; Magwood Decl. ¶ 4-5 (**Ex. 28**).

lay on the floor of his cell, bleeding, for about 40 minutes.⁶⁸ Blood covered his face and clothes.⁶⁹ Magwood had a severe laceration to his face and was taken to Cooper Green hospital.⁷⁰

Rodney Davis: On July 24, 2009, Davis was found "covered in blood," and "bleeding profusely from the nose and mouth."⁷¹ He had been stabbed 11 times in the back, arm and neck.⁷² In the infirmary, he was "spitting up clots of blood."⁷³ Davis was taken to UAB Trauma Unit "due to the severity of . . . injuries."⁷⁴

Jeremy Cutts: On July 13, 2009, Cutts suffered stabbing to his chest with a "bubbling wound."⁷⁵ His "[u]ndershirt was soaked in blood."⁷⁶ He was sent to the emergency room by ambulance,⁷⁷ but was picked up by Life Saver Helicopter en route due to severe breathing problems.⁷⁸

⁶⁸ Damon Magwood Decl. ¶ 6 (Ex. 28).

⁶⁹ See id. at ¶ 8.

⁷⁰ See Ex. 1, Summary Chart, p. 43; Ex. 1, Incident Report Hetzel 21241; Damon Magwood Decl. ¶ 8.

⁷¹ See Ex. 1, Summary Chart, p. 43; Ex. 1, Incident Report Hetzel 21391.

⁷² See Ex. 1, Summary Chart, p. 43; Ex. 1, Incident Report Hetzel 21393.

⁷³ See id.

⁷⁴ See Ex. 1, Summary Chart, p. 42; Ex. 1, Incident Report Hetzel 21392.

⁷⁵ See Ex. 1, Summary Chart, p. 42; Ex. 1, Incident Report Hetzel 20611.

⁷⁶ See Ex. 1, Summary Chart, p. 42; Ex. 1, Incident Report Hetzel 20607.

⁷⁷ See Ex. 1, p. 42; Incident Report (Hetzel 20608).

⁷⁸ See id.

Steven Crowden: On June 7, 2009, Crowden was stabbed while he was asleep.⁷⁹ The stabbing resulted in a laceration to his jaw "thru to [his] inner mouth."⁸⁰

Larry Wayne Jones: On April 30, 2009, a prisoner slashed Jones with a razor from his right forearm to the top of his thumb, leaving an 18-inch wound.⁸¹ When Jones approached an officer, bleeding, to report the incident, the officer told him to mop up the blood and to "come up with a story" about how he had been injured so the officer would not have to do paperwork.⁸²

Jameth McDonald: On April 26, 2009, McDonald was stabbed four times and suffered a punctured lung.⁸³ He was stabbed through his nose and had two black eyes.⁸⁴ "The severity of McDonald's injuries required that he be transported to UAB hospital for treatment."⁸⁵

Christopher Benjamin: On April 21, 2009, in the W block segregation yard, Benjamin was repeatedly stabbed in the face by an inmate wielding a box cutter.⁸⁶ He received 32

⁷⁹ See Ex. 1, Summary Chart, p. 41; Ex. 1, Incident Report Hetzel 19277.

⁸⁰ See Ex. 1, Summary Chart, p. 41; Ex. 1, Incident Report Hetzel 19278.

⁸¹ See Jones Depo. [Ex. 17 to Doc. No. 81] at 80:3-10; Jones Decl. ¶ 1-2 [Ex. 1 to Doc. No. 48]; Ex. 1, p. 40; Ex. 1, Incident Report, Hetzel 18021.

⁸² See id.

⁸³ See McDonald Decl. [Ex. 2 to Doc. No. 48] ¶ 6-7.

⁸⁴ See id. ¶ 7; Ex. 1, Summary Chart, p. 39; Ex. 1, Incident Report, Hetzel 17907.

⁸⁵ See Ex. 1, Summary Chart, p. 39; Ex. 1, Incident Report Hetzel 17907, 17909.

⁸⁶ See Benjamin Depo. [Ex. 19 to Doc. No. 81] at 52:5-17, 61:5-9.

stitches on his face and neck and 17 stitches on his side.⁸⁷
His face is permanently disfigured.⁸⁸

Larry Jones: On April 4, 2009, Jones was stabbed 10 times in a segregation cell.⁸⁹

Sahking Burke: On April 1, 2009, Burke and two other men were stabbed in the gym.⁹⁰ Burke was stabbed in the neck and collar bone.⁹¹

Cedric Jones: On March 27, 2009, Jones was stabbed, resulting in three puncture wounds to his back and one to his arm.⁹²

Jefferson Young: On February 2, 2009, Young was stabbed three times.⁹³

Michael Mays: On January 28, 2009, Mays was hospitalized after he was beaten unconscious by thirteen prisoners inside a cell.⁹⁴ Both his eyes were swollen shut and he was urinating and throwing up blood.⁹⁵

⁸⁷ See Benjamin Decl. [Ex. 3 to Doc. No. 48] at ¶ 13.

⁸⁸ See id.

⁸⁹ See Russell Decl. [Ex. 4 to Doc. No. 32] at ¶ 5; Ex. 1, Summary Chart, p.38, Ex. 1, Incident Report, Hetzel 17308.

⁹⁰ See Burke Decl. [Ex. 1 to Doc. No. 32] at ¶ 11-14; Ex. 1, Summary Chart, p. 38, Ex. 1, Incident Report (Hetzel 21406).

⁹¹ See Burke Decl. [Ex. 1 to Doc. No. 32] at ¶ 11.

⁹² See Ex. 1, Summary Chart, p. 37; Ex. 1, Incident Report, Hetzel 6230, 6234.

⁹³ See Ex. 1, Summary Chart, p. 34; Ex. 1, Incident Report, Hetzel 4791.

⁹⁴ See Mays Depo. [Ex. 20 to Doc. No. 81] at 204-06; Mays Decl. [Ex. 2 to Doc. No. 32] at ¶ 1-2; Ex. 1, Summary Chart, p. 33; Ex. 1, Incident Report, Hetzel 4772i.

⁹⁵ See Ex. 1, Incident Report, Hetzel 4772p.

Sahking Burke: On December 24, 2008, Burke was stabbed 13 times and suffered two punctured lungs.⁹⁶ He was taken to a hospital approximately eight hours after he was stabbed.⁹⁷ He was kept in the hospital for four days.⁹⁸

Brandy Harris: On October 17, 2008, Harris was stabbed in his clavicle and right arm.⁹⁹

John Johnson: On October 9, 2008, Johnson was stabbed multiple times, resulting in wounds to his left side, chest and back.¹⁰⁰

Christopher Benjamin, James McLemore: On August 29, 2008, in a disciplinary segregation block, both men were injured in a physical altercation, one sustaining five lacerations to his face.¹⁰¹

Charles Bryant: On July 27, 2008, Bryant was stabbed in the head and was taken to the hospital.¹⁰²

Charles Malec: On July 23, 2008, Charles Malec was asleep in his bunk when a prisoner he did not know slashed his face with a razor from his temple to his neck.¹⁰³ He was

⁹⁶ See Burke Depo. [Ex. 21 to Doc. No. 81] at 30-31; Ex. 1, Summary Chart, p. 31; Ex. 1, Incident Report, Hetzel 4513.

⁹⁷ See Burke Decl. [Ex. 1 to Doc. No. 32] at ¶ 2.

⁹⁸ See id.

⁹⁹ See Ex. 1, Summary Chart, p. 28; Ex. 1, Incident Report Hetzel 4157-58, 4160.

¹⁰⁰ See Ex. 1, Summary Chart, p. 28; Ex. 1, Incident Report Hetzel 4107-4109, 4107-08.

¹⁰¹ See Ex. 1, Summary Chart, p. 25; Ex. 1, Incident Report, Hetzel 13657-58, 13654.

¹⁰² See Ex. 1, Summary Chart, p. 23; Ex. 1, Incident Report Hetzel 12687, 12683.

¹⁰³ See Malec Decl. [Ex.6 to Doc. No. 32] at ¶ 2; Ex. 1, p. 23; Ex. 1, Incident Report, Hetzel 12511, 12554.

awakened by the feeling of being slashed and the sensation of blood gushing out of his face.¹⁰⁴ No officers were in the dorm at the time of the assault.¹⁰⁵

Christopher Douglas: On July 12, 2008, Douglas was stabbed seven times and was taken to Carraway Hospital.¹⁰⁶

Demetrius Fulford: On June 23, 2008, Fulford was stabbed multiple times in the thorax and head.¹⁰⁷ He was taken to Carraway Hospital with a collapsed lung.¹⁰⁸

Robert Smith: On June 11, 2008, an officer observed blood on the wall and floor of a cell.¹⁰⁹ Smith was presented to the infirmary "per stretcher covered with blood." Id. He was unresponsive, having been stabbed repeatedly in the head. Id.

Ricardo Swift: On June 5, 2008, Ricardo Swift, who was in a locked segregation cell, allegedly did not allow an officer to close the cell's tray door and "struck at" the officer "with an empty hand."¹¹⁰ The officer responded by holding Swift's arm outside the cell door and hitting the arm with a baton. Surgery was required to repair the resulting fracture to Swift's arm.¹¹¹

¹⁰⁴ See Malec Decl. [Ex.6 to Doc. No. 32] at ¶ 2.

¹⁰⁵ See Id.

¹⁰⁶ See Ex. 1, Summary Chart, p. 22; Ex. 1, Incident Report Hetzel 12195, 12192.

¹⁰⁷ See Ex. 1, Summary Chart, p. 21; Ex. 1, Incident Report Hetzel 11658, 11651-53.

¹⁰⁸ See id.

¹⁰⁹ See Ex. 1, Summary Chart, p. 20; Ex. 1, Incident Report Hetzel 11312, 11311.

¹¹⁰ See Ex. 1, Summary Chart, p. 20; Ex. 1, Incident Report Hetzel 11100.

¹¹¹ See Medical Records [Ex. 25 to Doc. No. 81](noting that prisoner was assaulted by officers, his arm was fractured, he required surgery under general anesthesia, and several screws were placed in his arm to repair the fracture).

Damion Fantray: On May 30, 2008, officers saw a prisoner exit a cell with his "body covered in blood."¹¹² The cell floor was also "covered with blood." Fantray had been stabbed with a box cutter in his chest and was "bleeding profusely."¹¹³ He was taken to UAB hospital by Life Saver helicopter.¹¹⁴

Eddie Ringold: On May 30, 2008, an officer saw Ringold running into the block "with an open chest wound." Ringold was lacerated with a box cutter.¹¹⁵ He was sent to UAB hospital by ambulance with "potential for fluid volume deficit."¹¹⁶

Aaron Morris: On May 30, 2008, in the same incident involving Ringold (above), Morris was cut with a box cutter on his chest resulting in a large gash that was bleeding heavily.¹¹⁷ He was also taken to the hospital.¹¹⁸

Gerald Vann: On May 27, 2008, Vann was found in a cellblock to which he was not assigned "bleeding profusely in the facial area."¹¹⁹ Multiple stab wounds had been inflicted with a knife, and he was taken to Carraway Hospital.¹²⁰

¹¹² See Ex. 1, Summary Chart, p. 19; Ex. 1, Incident Report Hetzel 10972.

¹¹³ See id. at Hetzel 10976.

¹¹⁴ See id. at Hetzel 10972-73.

¹¹⁵ See Ex. 1, Summary Chart, p. 19; Ex. 1, Incident Report, Hetzel 10959-64.

¹¹⁶ See id.

¹¹⁷ See Ex. 1, Summary Chart, p. 19; Ex. 1, Incident Report, Hetzel 10959-64.

¹¹⁸ See id.

¹¹⁹ See Ex. 1, Summary Chart, p. 18; Ex. 1, Incident Report, Hetzel 10833, 10842.

¹²⁰ See id. at Hetzel 10842.

John Hicks: On May 18, 2008, just three days after arriving at Donaldson, former named plaintiff John Hicks was assaulted by a prisoner wielding a mop handle approximately 4 feet long in A block.¹²¹ Hicks was "bleeding profusely."¹²² He suffered a broken nose, a laceration to his face, and complete, permanent vision loss in one eye.¹²³ Hicks was taken to the emergency room and later had surgery which failed to restore his vision.¹²⁴

Name Redacted: In April 2008, an inmate alleged that he had been raped by several inmates.¹²⁵ He was bleeding, had a "burst" lip, and had two loose teeth.

Alfonzo Lark: On April 16, 2008, Lark was stabbed multiple times. A knife was recovered wrapped in a bloody jacket. Lark was taken by ambulance to the hospital.¹²⁶

All of these incidents were documented in the Department's own records. Thus, Defendants have knowledge of them.

IV. THE DEPARTMENT'S MISREPRESENTATION OF THE LEVEL OF VIOLENCE AT DONALDSON CORRECTIONAL FACILITY.

Despite the incidents listed above, the Department has repeatedly downplayed the level of violence at Donaldson. Warden

¹²¹ See Ex. 1, Summary Chart, p. 17; Ex. 1, Incident Report Hetzel 10580.

¹²² See id.

¹²³ See Hicks Decl. [Ex. 26 to Doc. No. 81] at 3; see also Ex. 1, Summary Chart, p. 17; Ex. 1, Incident Report, Hetzel 10583.

¹²⁴ See Ex. 1, Incident Report, Hetzel 10583; Hicks Decl. [Ex. 26 to Doc. No. 81] at 3.

¹²⁵ See Ex. 1, Summary Chart, p. 16; Ex. 1, Incident Report Hetzel 10119.

¹²⁶ See Ex. 1, Summary Chart, p. 16; Ex. 1, Incident Report Hetzel 9719-21, 9725.

Hetzel filed an affidavit in which he cited the Department's *Monthly Statistical Reports* and concluded that violence at Donaldson was not "at an emergency level of concern."¹²⁷ Warden Gordy was similarly untroubled by the level of violence at Donaldson.¹²⁸ When asked in his deposition if he could recall any information about any inmate who suffered a serious injury from an inmate assault at Donaldson, he could think of one such instance:

Q: Aside from the incident [just discussed] with Mr. Reynolds, when was the last time that you can recall an inmate sustaining a serious injury as a result of an inmate-on-inmate assault?

A: I'm trying to think, ma'am. And this is, you're saying serious injury?

Q: Yes, sir.

A: I'm drawing a blank.¹²⁹

¹²⁷ See Third Afft. of Gary Hetzel [Ex. 3 to Doc. No. 85] at 4; Hetzel Depo. [Ex. 4 to Doc. No. 81] at 112:20-23, 113:16-23, 114:1-8 (stating that, in writing his affidavit, Warden Hetzel relied on the Department's *Monthly Statistical Reports*). These reports are published on the Department's website and list the number of assaults in Alabama prisons. Until the Alabama Supreme Court's decision in Allen v. Barksdale, 2009 WL 2997601 (Ala. Sept. 18, 2009) (finding the Department of Corrections violated the Alabama Open Records Act in refusing to produce records about violence at Donaldson under the Act), these *Monthly Reports* were the only source of public information about assaults in Alabama prisons.

¹²⁸ See Gordy Depo., Oct. 28, 2009, 77:10-23; 781-13 (Ex. 2) (stating violence was "acceptable" and not "excessive").

¹²⁹ Id. at 90:6-14.

Warden Gordy, moreover, relied on the Department's *Monthly Statistical Reports* to support his contention that the level of violence at Donaldson is "acceptable":

Q: [A]s one of the wardens at the facility I assume that you have some familiarity with the level of inmate-on-inmate violence at the facility?

A: Uh-huh.

Q: Is that level acceptable in your mind?

A: In my opinion, yes, it's no worse than any other facility that I'm aware of. . . .

Q: What information do you have that you base that statement on?

A: Well, we review statistical reports on assaults and there's information from other facilities and just basically working there. I mean, there's not a stabbing every day, two or three stabbings every day.¹³⁰

As it turns out, the Department's *Monthly Statistical Reports* are inaccurate. Plaintiffs compared the data in the Department's public reports to its internal reports, obtained in discovery, for the period of April 2008 - April 2009. As Exhibit 11 shows, the Department underreported the number of critical incidents - including assaults - at Donaldson between April 2008 and April 2009 during every month of that year except

¹³⁰ Gordy Depo. 77:10-23, 781-13 (Ex. 2).

one.¹³¹ Inaccuracies in the data relied upon by Warden Hetzel and released to the public include the following:

- The Department's March 2009 statistical report stated that there were "0" assaults, "0" fights, and "0" sexual assaults at Donaldson that month.¹³² Internal ADOC reports obtained in discovery, however, revealed **two knifings, three other assaults with weapons, and seven assaults/fights without weapons in March 2009.**¹³³ One of these assaults required a prisoner to be transported to the hospital for eye trauma; another required a prisoner to be transported to the hospital after being beaten in the face with a lock; a third prisoner was severely beaten with a piece of wood; another alleged he was raped.¹³⁴
- The Department's June 2008 statistical report stated that there were "0" assaults and "0" fights at Donaldson that month.¹³⁵ In fact, there were at least 6 fights/assaults, including one in which a prisoner was stabbed 15 times, requiring emergency transport to an outside hospital for a collapsed lung, and another in which a prisoner was found "unresponsive" and "covered with blood" with "blood on the locker boxes, wall, and floor of the cell."¹³⁶

¹³¹ See **Ex. 11** (showing the Department's under-representation of assaults at Donaldson).

¹³² See **Ex. 11**, p. 3.

¹³³ See **Ex. 1**, Summary Chart, 36-38; **Ex. 1**, Incident Reports: March 1, 2009, Hetzel 5319; March 6, 2009, Hetzel 5495; March 7, 2009, Hetzel 5498; March 10, 2009, Hetzel 5693; March 13, 2009, Hetzel 5782; March 15, 2009, Hetzel 5858; March 18, 2009, Hetzel 5959; March 19, 2009, Hetzel 5999; March 21, 2009, Hetzel 6067; March 26, 2009, Hetzel 6194; March 27, 2009, Hetzel 6230; March 30, 2009, Hetzel 5055.

¹³⁴ See id.

¹³⁵ See **Ex. 11**, p. 1.

¹³⁶ See **Ex. 1**, Summary Chart, p. 19-21; **Ex. 1**, Incident Reports: June 3, 2008, Hetzel 11067; June 3, 2008, Hetzel 11070; June 11, 2008, Hetzel 11311; June 23, 2008, Hetzel 11651; June 23, 2008, Hetzel 11647; June 28, 2008, Hetzel 11800.

- **The Department disclosed only 1 "assault with serious injury" between April 2008 and April 2009.¹³⁷ In fact, at least 16 prisoners at Donaldson were taken to outside hospitals for emergency treatment for violent trauma during this period.¹³⁸ At least two of these men suffered collapsed lungs, one was blinded in one eye and required multiple surgeries, another was urinating and vomiting blood after being beaten, and another suffered eye trauma.¹³⁹**
- **During the month of May 2008 alone, 5 men required transport to a free-world hospital to receive emergency medical care for violent trauma.¹⁴⁰ One was blinded in one eye, another was stabbed and "bleeding profusely in the facial area," a third was stabbed and suffered an "open chest wound" with potential for "fluid volume deficit," a fourth was stabbed in the chest with heavy bleeding, and a fifth was found "covered in blood" after a stabbing and transported via Life Saver helicopter to the hospital.¹⁴¹ In addition, there were at least 4 other assaults/fights reported in internal documents that month.¹⁴² The ADOC's public data for May 2008, by contrast, reported only: 1**

¹³⁷ See Ex. 11, p. 1-3.

¹³⁸ See Ex. 1, Incident Reports: April 16, 2008, Hetzel 9719; May 18, 2008, Hetzel 10580; May 27, 2008, Hetzel 10829; May 30, 2008, Hetzel 10959; May 30, 2008, Hetzel 10972; June 23, 2008, Hetzel 11651; July 12, 2008, Hetzel 12192; July 27, 2008, Hetzel 12683; Oct. 28, 2008, Hetzel 4218; Dec. 24, 2008, Hetzel 4513; Dec. 24, 2008, Hetzel 4529; Jan. 28, 2009, Hetzel 4772i; Mar. 1, 2009, Hetzel 5319; Mar. 6, 2009, Hetzel 5495; April 26, 2009, Hetzel 17907.

¹³⁹ See id.

¹⁴⁰ See Ex. 1, Summary Chart, p. 17-19; Ex. 1, Incident Reports: May 18, 2008, Hetzel 10580; May 27, 2008, Hetzel 10829; May 30, 2008, Hetzel 10959 (two men to emergency room); May 30, 2008, Hetzel 10972.

¹⁴¹ See id.

¹⁴² See Ex. 1, Summary Chart, p. 17-19.

fight, 1 assault with serious injury, and 2 assaults without serious injury.¹⁴³

- The Department's statistical reports show "0" sexual assaults and "0" allegations of sexual assault in April 2008, December 2008, and March 2009.¹⁴⁴ Internal incident reports from the same time frames, however, show otherwise.¹⁴⁵

In short, Department officials have repeatedly underreported the level of violence at Donaldson.

V. CONDITIONS AT THE PRISON

The following conditions have contributed to the serious risk of harm to men at Donaldson:

A. OVERCROWDING: When this lawsuit was filed on February 26, 2009, Donaldson housed 1,732 men, over 700 more people than the prison was designed to hold.¹⁴⁶ Despite already dangerous conditions and understaffing, the Department actually increased the number of men at the prison, adding 100 more men between 2007 and early 2009.¹⁴⁷

¹⁴³ See Ex. 11, p. 1.

¹⁴⁴ See Ex. 11, p. 1-3.

¹⁴⁵ See Ex. 1, Incident Reports: Apr. 28, 2008, Hetzel 10119; Dec. 1, 2008, Hetzel 4357; Mar. 21, 2009, Hetzel 6067.

¹⁴⁶ See Inmate Count Sheet, Feb. 26, 2009, Hetzel 3311 [Ex. 3 to Doc. No. 81].

¹⁴⁷ See Inmate Population Chart (**Ex. 30**). This chart summarizes information in the Department's *Monthly Statistical Reports* published on the Department's website.

As recently as April 2009, moreover, hundreds of Donaldson inmates have been "triple-bunked" in cells measuring approximately 7 x 10 feet each, a practice that fell well below the American Correctional Association's Space Requirement Standard.¹⁴⁸ Photographs depicting these cells are attached as Exhibit 4. Following plaintiffs' counsel's complaints of overcrowding at Donaldson, on February 22, 2009, third bunks were removed from dormitories X and Y.¹⁴⁹ After this lawsuit was filed, in March and April 2009, the Department removed the remaining third bunks from three-man cells in A,B,C, and D dormitories.¹⁵⁰

The parties agree that Donaldson, now housing 1,547 inmates, is still far beyond its original design capacity of 964 inmates. Even with the removal of the third bunks, the safe operating capacity at Donaldson is substantially below the current authorized bed capacity of 1,654.¹⁵¹ Overcrowding is

¹⁴⁸ See Martin Report [Ex. 1 to Doc. No. 81] at 7. See also Gregory Wynn Depo. [Ex. 5 to Doc. No. 81] at 136:2-22 (describing lack of space in three-man cells and resulting tension and fights); Billy Jessie Depo. [Ex. 6 to Doc. No. 81] at 75:1-19 ("crowdedness" caused fights in A block); Coy Patrick Crowe Depo. [Ex. 7 to Doc. No. 81] at 34:16-23 (describing the limited space in three-man cells).

¹⁴⁹ See Third-Bunk Removal Document [Ex. 8 to Doc. No. 81] (stating that third bunks were removed on February 22, March 9, April 1, and April 8).

¹⁵⁰ See id.

particularly problematic in dormitories K,L,M,N and O, five separately enclosed, open dormitories on the prison's south side, housing about 620 men.¹⁵² More than one third of the men at Donaldson are assigned to the "south side" dorms, and inmates are regularly transferred to and from the dorms during their incarceration at Donaldson.¹⁵³

At the time this suit was filed, the south side dorms contained densely-packed bunk beds, significantly limiting officers' visibility. As Plaintiffs' expert, Steve Martin, commented after he inspected the prison in September 2009:

The open-bay dorms are so spatially dense with double bunking that unobstructed sight lines for the housing officer rovers are virtually non-existent. Moreover, space between the beds is so extremely limited that there is barely an arms length between double bunks making unencumbered space scarce. The shower-to-inmate ratio for these dorms is more than double the recommended ACA Standard for Showers. The recommended ACA Standard for

¹⁵¹ See Martin Report [Ex. 1 to Doc. No. 81] at 7.

¹⁵² See Martin Report [Ex. 1 to Doc. No. 81] at 7-8. See also Charles Malec Depo. [Ex. 9 to Doc. No. 81] at 71-72, 74-76 (describing overcrowding, frequent fights, and the unauthorized presence of large numbers of inmates from A,B,C and D blocks in K dorm); Photographs (Ex. 4).

¹⁵³ See Charles Malec Depo. [Ex. 9 to Doc. No. 81] at 22 (stating that he is assigned to K dorm, but has also lived in A/B block); Brandon Russell Depo. [Ex. 10 to Doc. No. 81] at 23:23, 24:1 ("I've been assigned to every block at this prison except Death Row."); James Taylor Depo. [Ex. 11 to Doc. No. 81] at 40:12-13 ("I have lived in open dorms and in cells."); Billy Jessie Depo. [Ex. 6 to Doc. No. 81] at 44:14-17, 47:7-22 (stating that he was assigned to A/B block, the south side, and many other housing areas).

Toilets is 1:12; however, when the Donaldson dorms are operating at full capacity the toilet ratio is 1:26. [Note: These ratios assume that all toilets and showers are properly functioning.]¹⁵⁴

In October 2009, following Mr. Martin's recommendation, the Department reconfigured the beds in certain south side dorms to increase visibility.¹⁵⁵ The Department did not, however, implement Mr. Martin's equally crucial recommendation to reduce the population in the south side dorms.¹⁵⁶ A photograph of a south side dorm, taken between November 2009 and January 2010, is attached as Exhibit 4(a).

Some examples illustrate Donaldson's overcrowding more clearly. In the south side dorms, inmates can lie on their bunks, reach out their arms, and touch other inmates. See Ex. 4(a). Inmates' locker boxes are adjacent to the bunks, further reducing space, and requiring an inmate to intrude into another inmate's bunk space when he bends to reach his property.¹⁵⁷ Further, crowding taxes shower and toilet facilities. "Long lines" form for the toilets.¹⁵⁸ As Officer Cooper testified,

¹⁵⁴ See Martin Report [Ex. 1 to Doc. No. 81] at 7.

¹⁵⁵ See Assoc. Comm'r James DeLoach Depo. 88:2-6 (**Ex. 12**).

¹⁵⁶ See DeLoach Depo. 41:22-23, 42:1-6 (stating that there are no further plans to reduce the population at Donaldson, and no plan to reduce the number of men in the south side dormitories).

¹⁵⁷ See James Taylor Depo. 171:9-12; 186:1-6.

¹⁵⁸ See James Taylor Depo. 187:1-3.

when one of the four toilets for the 120 men in the dorm goes out of order, “[i]t can be nasty at times and unsanitary at times.”¹⁵⁹ Limited space in the dorms sparks fights.¹⁶⁰

B. LACK OF SUPERVISION: The parties agree that Donaldson is understaffed.¹⁶¹ The Alabama Department of Corrections has the highest inmate-to-correctional officer ratio of any state in the nation.¹⁶² And, according to the Department’s operations chief, out of all prisons in Alabama, Donaldson is most in need of additional security personnel.¹⁶³ At Donaldson, fully 25% of authorized correctional security positions were vacant as of

¹⁵⁹ See Officer Cooper Depo. 102:16-23, 103:1-5, 22-23, 104:1.

¹⁶⁰ See Malec Depo. 120:8-19 (“I’d like to see the population drop down where it’s supposed to be at, where you could move around and not have to worry about running into somebody and getting busted up side the head because you accidentally bump into somebody.”); James Taylor Depo. [Ex. 11 to Doc. No. 81] 170:6-23.

¹⁶¹ See Assoc. Comm’r James DeLoach Depo., Jan. 20, 2010, 22:9-17 (stating that there were 68 authorized, vacant correctional security positions at Donaldson in January 2010 and stating that this number is about the same as it was last year); Lt. Terry Raybon Depo. [Ex. 12 to Doc. No. 81] at 71:21 (“[W]e are short staffed.”).

¹⁶² See Bureau of Justice Statistics, *Census of State and Federal Correctional Facilities, 2005*, Oct. 2008, NCJ 222182.

¹⁶³ See DeLoach Depo. 99:23-23; 100:1-13 (stating that “[t]he nature of the offenders that are housed at that facility would place it at the top of the list.”)(Ex. 12).

July 2009.¹⁶⁴ The 25% shortage at Donaldson translated to 74 required officer positions not available for service at the prison.¹⁶⁵ Such a significant shortage is more urgent in light of the Department's 2006 Staffing Study pertaining to Donaldson.¹⁶⁶ As Steve Martin observed:

The *Staffing Study Needs Summary* of that report found that the facility should be staffed with 411 security personnel. **Utilizing this finding, the facility is operating with [224 officers], a shortage of some 187 officers or roughly one-half of their recommended security staffing complement.**¹⁶⁷

The State has been on notice of staffing problems at Donaldson for years. In March 2005, former Warden Stephen Bullard wrote to then Commissioner Donal Campbell stating that understaffing at Donaldson had reached the crisis point.¹⁶⁸

¹⁶⁴ See Ala. Dep't of Corr. July 2009 Monthly Statistical Report at 15 <http://www.doc.state.al.us/docs/MonthlyRpts/2009-7.pdf>; Martin Report [Ex. 1 to Doc. No. 81] at 8.

¹⁶⁵ See Martin Report at 8.

¹⁶⁶ See Comm'r Richard Allen Depo. 79:11-23, 80:1-9 (stating that Commissioner Allen commissioned a staffing study to determine what staffing level the department "really needed at each facility.")(Ex. 13); see ADOC Staffing Study [Ex. 13 to Doc. No. 81], Hetzel 00035-00077 (filed under seal).

¹⁶⁷ See Martin Report [Ex. 1 to Doc. No. 81] at 8 (emphasis added) (relying on ADOC July 2009 Monthly Statistical Report reporting 224 actual security staff). Plaintiffs note that the staff is separated into four shifts so that only about one-quarter of the actual staff is on shift at the prison at any one time. See Lt. Raybon Depo. [Ex. 12 to Doc. No. 81] at 17:12-15.

¹⁶⁸ See Letter from Bullard to Campbell, March 1, 2005 (Ex. 14); Stephen Bullard Depo., Nov. 20, 2007, Bogus v. Ala. Dep't of Corr., Civil Action No. 7:06-cv-1667-RDP (N.D. Ala.) at 74:9-

Warden Bullard wrote: "I am concerned that it is going to take a lawsuit, riot, death or serious injury for anyone to take this crisis seriously."¹⁶⁹ At the time Warden Bullard sent this letter, the prison was operating at a staffing level of about 42-49 officers per shift.¹⁷⁰ According to Warden Gordy, as of October 2009, Donaldson was operating at a staffing level of about 40-43 officers per shift.¹⁷¹

The current staffing shortage is particularly acute in dorms K through O, populated with about 620 men.¹⁷² Officer Richard Cooper, who worked K through O dorms in 2008, stated in his deposition that typically only two roving officers and two cubicle officers were assigned to cover the 620 men in these

17 (stating under oath that he wrote a letter to Commissioner Campbell on March 1, 2005)(Ex. 15).

¹⁶⁹ See Letter from Bullard to Campbell, March 1, 2005 (Ex. 14); Stephen Bullard Depo., Nov. 20, 2007 (Ex. 15).

¹⁷⁰ See Stephen Bullard Depo., Nov. 20, 2007, Bogus v. Ala. Dep't of Corr., Civil Action No. 7:06-cv-1667-RDP (N.D. Ala.) at 68:11-20 (Ex. 15).

¹⁷¹ See Gordy Depo. at 27:1-7; Defendants' expert, Mr. Stalder, opined that the Department's staffing plan is adequate. See Stalder Report [Ex. 2 to Doc. No. 85] at 9-11. But Mr. Stalder's report assumes that there are more officers at the prison than there actually are. Cf. Stalder Report at 9-11 (listing 54 security positions per shift); Warden Gordy Depo. at 25:6-8, 27:1-7 (stating that the prison has been operating with about 40-43 officers per shift in the last two months).

¹⁷² See Martin Report [Ex. 1 to Doc. No. 81] at 9.

five, separately enclosed dormitories.¹⁷³ **Officer Cooper further stated that about once per week, there were periods of time when he was the sole assigned roving officer supervising all of the inmates in five separately enclosed dormitories.**¹⁷⁴ In 2008, Officer Cooper filed a grievance with Warden Hetzel stating that the "manning level" of 43 officers per shift "does not provide enough manpower for regular posts."¹⁷⁵ Officer Cooper filed this grievance "[t]o correct the officer to inmate ratio" because he "felt like there wasn't enough security."¹⁷⁶

Little has changed. There were 68 officer vacancies at Donaldson in January 2010.¹⁷⁷ In his deposition on October 28, 2009, Assistant Warden Gordy testified that, for the preceding two months, the staffing level had been "steady" between 40-43 officers.¹⁷⁸ On the day of Mr. Martin's site inspection in

¹⁷³ See Richard Cooper Depo. [Ex. 14 to Doc. No. 81] at 23:2-20, 24:4-9.

¹⁷⁴ See Cooper Depo. [Ex. 14 to Doc. No. 81] at 51:10-13, 52:14-23, 53:1.

¹⁷⁵ See Cooper Grievance and Hetzel Response, May 2008 (Ex. 16).

¹⁷⁶ See Cooper Depo. [Ex. 14 to Doc. No. 81] at 58:17-19.

¹⁷⁷ See DeLoach Depo. 22:9-12 (Ex. 12)(stating that there are 68 correctional security vacancies).

¹⁷⁸ See Gordy Depo. 25:6-16, 27:1-5,19-23, 28:1-4. Warden Gordy further testified that the "40-43" figure included cadets, see id. at 180:7-10, and supervisory personnel such as lieutenants and captains. Id. at 162:1-8.

September 2009, there were again 43 officers on duty for 1,545 inmates.¹⁷⁹ Mr. Martin observed that from his review of Facility Post Assignment Rosters, there were still occasions on which certain south side dorms were left without a roving officer:¹⁸⁰

I certainly saw rosters in which there was not an officer assigned to each one of those [south side] dorms on a given shift which tells you, at any given time, one of those dorms is going to be without a floor officer (Id. at 440:20-23, 441:1-2).

[T]he advantage I have over your expert is the staffing study that was done for you at your request is much more in line with me than your own expert. (Id. at 223:9-13).

Shortly after this lawsuit was filed, Charles Malec stated that were hours of each day during which no officers were present in K dorm where he is housed.¹⁸¹ More recently, Mr. Malec kept a log of roving officers who supervised the south side dorms from September to October 2009. In his log (Ex. 10), Mr. Malec noted numerous shifts on which all five south side dorms were manned by two or three roving officers.¹⁸² **According**

¹⁷⁹ See Martin Report [Ex. 1 to Doc. No. 81] at 9.

¹⁸⁰ See Martin Depo. [Ex. 1 to Doc. No. 85] at 440:20-23, 441:1-2.

¹⁸¹ See Malec Depo. [Ex. 9 to Doc. No. 81] at 65:2-6, 67:7-18, 147:11-23, 148:1-16; Malec Decl. at 2 [Ex. 6 to Doc. No. 32] ("There are often long periods of time when there are no officers in the dorm at all. Consequently, fights are a common occurrence.").

¹⁸² See Malec Decl., Feb. 2, 2010, ¶ 7 (Ex. 10).

to Mr. Malec, as of February 2010, there are still seven to eight hours every day during which there are no roving officers in K dorm, housing about 130 men.¹⁸³ As Steve Martin concluded:

[a] staffing complement of forty-three officers per shift for a maximum security facility with roughly 1600 inmates, staff intensive housing, and a sizeable portion of those inmates housed in spatially dense dorms with obscured sight lines, is by any measure with which I am familiar insufficient to maintain minimal levels of safety and security at the facility.¹⁸⁴

The Department, however, has no plans to increase staffing at Donaldson.¹⁸⁵

C. SERIOUS LETHAL WEAPONRY: Donaldson has an "armed population" of prisoners with a level of "serious lethal weaponry" that "exceeds" what expert witness Steve J. Martin has "seen in any institution in recent memory."¹⁸⁶ To give an example of the prevalence of weapons at the prison, on a single day in July 2009, officers confiscated the following weapons:

one knife made of metal approx. 8 inches long, with a wooden handle wrapped in black string (found in N dorm);

one knife made of metal, approx. 8 inches long with a melted handle (found in K dorm);

one knife made of metal approx. 5 inches long with a wooden handle (found in K dorm);

¹⁸³ See id. at ¶ 8.

¹⁸⁴ See Martin Report [Ex. 1 to Doc. No. 81] at 10.

¹⁸⁵ See DeLoach Depo. 99:2-21 (Ex. 12).

¹⁸⁶ See Martin Depo. [Ex. 1 to Doc. No. 85] at 448:8-16, 449:6-19.

one knife made of metal approx. 8 inches long with a wooden handle (found in L dorm wall);

one knife approx. 6 inches long with a melted handle (found in L dorm);

one knife approx. 10 inches long with a melted handle (found in L dorm);

one knife approx. 5 inches in length with a wooden handle (found in M dorm);

one metal knife approx. 8 inches long with a black melted handle (found in N dorm)

one metal knife approx. 10 inches in length with a white sheet cut up and used as a handle (found in A/B block);

one metal knife with a white sheet cut up and used as a handle with the end of the handle curved (found in B block, common area);

one metal knife approx. 8 inches long with black melted substance on the handle (found in C block).¹⁸⁷

A month earlier, twelve other knives were found.¹⁸⁸ A month later, prison officials confiscated a 12-inch hacksaw blade from an inmate's cell.¹⁸⁹

Steve Martin made the following observations about the quantity of weapons found and used at the prison:

¹⁸⁷ See **Ex. 18**, Weapons Chart, p. 17; Ex. 18, Incident Report, July 27, 2009, Hetzel 21066-21070.

¹⁸⁸ See Ex. 18, Weapons Chart, p. 16; Ex. 18, Incident Report, June 4, 2009, Hetzel 19255-19257.

¹⁸⁹ See Ex. 18, Weapons Chart, p. 18; Incident Report, Aug. 26, 2009, Hetzel 21733-21737.

[A]t Donaldson, you have serious, serious lethal weaponry. . . . [T]hat's an armed population. They have deadly weaponry within reach of many of those cells. (Martin Depo. [Ex. 1 to Doc. No. 85] at 449:6-10).

[T]hat their interdiction program is reasonable does not constitute a basis to conclude that it is a safe facility. . . . [I]t's not unlike saying if you're taking on a lot of water in a boat and you have a small bucket and you're using the bucket to throw that water out, it's kind of academic if no matter how fast you're pouring that water out but you're taking on more than you're pouring out, the real issue is can you fix the gaping hole. (Id. at 364:22-23, 365:1-2, 11-20).

Some of it is a function of not having enough officers to do the job. (Id. at 451:22-23, 452:1).

Incident reports confirm that, at times, there have not been enough officers to conduct searches necessary to confiscate dangerous contraband.¹⁹⁰

Inmates at Donaldson are even able to obtain weapons in segregation cells. On August 12, 2009, an inmate in segregation slipped out of his handcuffs and used a 7 ½ inch-long, inmate-made knife to repeatedly stab another inmate.¹⁹¹ On September 25, 2009, another inmate in segregation was caught with a

¹⁹⁰ See e.g. Incident Report, Nov. 25, 2008 (Hetzel 6788) (stating that cell searches were not done in EFGH, IJ, PQ, RSTU or VW blocks "due to staff shortage"); Incident Report, Nov. 24, 2008 (Hetzel 6770) (stating that searches were not done in VW, RSTU, PQ, EFGH, or IJ blocks "due to staff shortage"); Incident Report, Feb. 4, 2009 (Hetzel 8648-8653 at 8649) (stating that no shakedowns were done in EFGH or IJ blocks on this date "due to staff shortage.") (**Ex. 17**).

¹⁹¹ See Ex. 1, Summary Chart, p. 44; Ex. 1, Incident Report, Hetzel 21585-21589; Ex. 18, Weapons Chart, p. 18.

knife.¹⁹² Karlon Perdue states that he regularly sees inmates with knives in segregation.¹⁹³ Brandon Russell reported that on April 4, 2009, an inmate was able to open Russell's segregation cell and stab his cellmate with a knife.¹⁹⁴

D. LACK OF CONTROLLED MOVEMENT: Inmates at Donaldson are able to leave their assigned cellblocks and roam to other areas of the prison, undetected. Plaintiff Charles Malec stated that prisoners at this maximum security facility are able to: leave cellblocks A,B,C, and D; navigate through a series of locked doors; go down a lengthy hallway; and proceed across the prison campus to the south side dorms.¹⁹⁵ Inmates specifically go to the open dorms to engage in fights.¹⁹⁶ Officer Cooper confirmed

¹⁹² See Ex. 18, Weapons Chart, p. 19; Incident Report, Hetzel 21885-21890.

¹⁹³ See Karlon Perdue Decl. ¶ 13 (**Ex. 22**).

¹⁹⁴ See Brandon Russell Depo. [Ex. 10 to Doc. No. 81] at 63:11-21 (referring to stabbing of cellmate), 68:1-14 (describing weapon and injuries).

¹⁹⁵ See Malec Depo. [Ex. 9 to Doc. No. 81] at 72:5-14, 77:10-16.

¹⁹⁶ See Malec Decl. at 2. See also Ex. 16 to Doc. No. 81, containing: Incident Report, Hetzel 4107, Oct. 7, 2008 (prisoner assigned to B block stabbed a man in K dorm); Incident Report, Hetzel 18291, May 6, 2009 (prisoner assigned to C/D block found on south side); Incident Report, Hetzel 18859, May 22, 2009 (prisoner assigned to M dorm found in L dorm); Incident Report, Hetzel 19210, June 1, 2009 (prisoner from B block found on south side black top); Incident Report, Hetzel 19932, June 24, 2009 (prisoner found on east hall reported to officer he had been on

that, in 2008, inmates could "sneak out of their block" and go to the south side dorms "every day," and that **sometimes there were as many as 100 inmates out of their assigned cellblocks and in the south side dorms.**¹⁹⁷

Steve Martin made the following observations about Officer Cooper's testimony in this regard:

[T]hat as many as a hundred inmates may be out of place over in those south dorms from the cell blocks at one time is absolutely astonishing to me. It - it represents a - a huge, huge flaw in controlled movement at a maximum security facility.¹⁹⁸

[I] quite frankly, am astonished . . . that you would refer to Donaldson . . . [a]nd it indeed is, in your system, a maximum security prison. To have that number of inmates across multiple security barriers able to go to a less secure area - from a more secure area . . . [I]t's just directly related to safety.¹⁹⁹

Mr. Martin was further troubled by "a number of examples where inmates were able to leave one secure area and perpetrate

south side); Hetzel 4151, Oct. 15, 2008 (prisoner found on south side near trade-school, not assigned area); Hetzel 4210, Oct. 27, 2008 (prisoners assigned to A&B block found on south side).

¹⁹⁷ See Cooper Depo. [Ex. 14 to Doc. No. 81] at 74:15-20, 75:7-20 ("Q: [H]ow often would you have inmates coming in from other areas of the prison to be present or hang out in [the] south side? A: Every day.").

¹⁹⁸ See Martin Depo. [Ex. 1 to Doc. No. 81] at 181:22-23, 182:1-5.

¹⁹⁹ Id. at 185:19-23, 186:1-6.

a serious assault on another inmate in another secure area.”²⁰⁰

He stated:

[I]f you have . . . instances where inmates can move substantial distances from one secure area to another without detection and actually perpetrate violence, that’s the antithesis of controlled movement. That . . . is a failed, flawed system.²⁰¹

In April 2009, to restrict inmate movement, the Department began to require inmates to wear wristbands designating their housing areas. While Steve Martin acknowledged that this was a positive step, he noted that wristbands are “just a security device or means to assist a live correctional officer” and are “rendered useless” without adequate staffing.²⁰² According to Charles Malec, as of February 2010, inmates from the cell blocks are still able to infiltrate the south side dormitories:

There are still a substantial number of inmates from the “blocks” on the other side of the prison who come to “hang out” in the south side dorms without authorization. I would estimate that I see at least 30 such people from the blocks in the south side dorms per week. The reason I know these people are not housed in the south side dorms is I can see that their wristbands are not the designated south side color. I can also see that the writing on their uniforms identify them as being housed in the blocks, not the south side dorms.²⁰³

²⁰⁰ Martin Depo. [Ex. 1 to Doc. No. 85] at 184:5-12.

²⁰¹ Martin Depo. 180:21-23, 181:1-6.

²⁰² Martin Depo. 454:11-23, 455:1-7.

²⁰³ Charles Malec Decl. Feb. 2, 2010, ¶ 10 (Ex. 10).

E. SIGNIFICANT TRAFFICKING IN CONTRABAND: A trade in illegal contraband - including narcotics and cell phones - has long flourished at Donaldson, fueling the violent atmosphere. Numerous assaults at the prison stem from disputes over drugs.²⁰⁴ Warden Hetzel estimates that about ten officers have been disciplined, during his time at the prison, for selling drugs at the prison.²⁰⁵ But the drugs are still coming in.²⁰⁶ When this lawsuit was filed, Charles Malec reported that inmates openly used illegal narcotics in his dorm.²⁰⁷ A year later, in February 2010, Mr. Malec reported:

[t]he ready availability of illegal drugs in K-dorm has not changed Every day I still see people either smoking

²⁰⁴ See Ex. 1 (containing Incident Reports dated: May 28, 2007 (ADOC I 1031-50) (reporting that injured man sent to the hospital following a stabbing had a dispute over drugs he purchased); May 27, 2008 (Hetzel 10829) (reporting that inmate who was seriously injured in stabbing incident had pressured another inmate to bring drugs into the prison); June 3, 2008 (Hetzel 11070) (stating that prisoner pulled a knife on another prisoner because the two "were having problems over a bad drug deal"); Sept. 8, 2008 (Hetzel 13903) (prisoner stabbed another prisoner repeatedly "allegedly over debts owed for drugs"); Feb. 24, 2009 (Hetzel 5275) (two prisoners housed in south side dorm "escaped" to C/D block to assault a prisoner who allegedly owed them money for drugs)).

²⁰⁵ Hetzel Depo. [Ex. 4 to Doc. No. 81] at 143:5-15.

²⁰⁶ See e.g. Warden Edwards Depo. [Ex. 22 to Doc. No. 81] 99:20-100:22 (stating that an inmate was caught in about April 2009 with "maybe close to maybe half a pound" of marijuana).

²⁰⁷ See Malec Decl. ¶ 9.

drugs, injecting drugs or drinking alcohol. I often smell marijuana and meth burning in the air.²⁰⁸

Cell phones are also commonly found in cell blocks throughout the prison. In the last five months for which plaintiffs have discovery (August - December 2009), 156 contraband cell phones were found at Donaldson, 94 of which were discovered in the possession of inmates or in inmates' living quarters, and 65 of which were discovered in the prison yard.²⁰⁹

F. ABSENCE OF GRIEVANCE PROCEDURE: There is no grievance procedure at Donaldson.²¹⁰ There is also no system for logging or tracking prisoner complaints about security or conditions.²¹¹ Warden Edwards testified that he gets requests and notes from inmates on a daily basis, but that he "trash[es]" unsigned inmate complaints and often throws away signed complaints.²¹²

²⁰⁸ See Malec Decl. Feb. 2, 2010, ¶ 9 (Ex. 10).

²⁰⁹ Incident reports documenting these numbers are on file with plaintiffs' counsel and can be produced to the Court.

²¹⁰ See Warden Edwards Depo. [Ex. 22 to Doc. No. 81] at 85:17-21 (confirming that there is no formal grievance process).

²¹¹ See Warden Edwards Depo. [Ex. 22 to Doc. No. 81] at 87:13-15, 88:3-19.

²¹² See Warden Edwards Depo. 87:13-15 (stating that he will "trash" unsigned complaints); 88:3-19 (stating that he sometimes throws away signed complaints).

The absence of a grievance procedure at Donaldson makes it difficult to report problems in a confidential manner.²¹³ It also makes it difficult to ensure that problems are conveyed to supervisory staff. Numerous prisoners have attempted to report problems to Warden Gordy, often in writing.²¹⁴ But Warden Gordy, who is in charge of responding to inmate complaints for a large percentage of the prisoner population at Donaldson, stated that since 2008, he had not received a single written complaint from any inmate regarding housing conditions, use of force, or any security issues.²¹⁵ In discovery, the Defendants were asked to produce all correspondence from inmates regarding conditions and violence at the prison. Defendants produced a total of three pieces of correspondence for the preceding year.²¹⁶

²¹³ See e.g. Jeffrey Blackwood Decl. ¶ 8 (**Ex. 19**) (stating that it can be dangerous for an inmate to approach the Shift Office to report fear of assault because other inmates see them and infer that they are "snitching").

²¹⁴ See Larry Wayne Jones Depo. [Ex. 17 to Doc. No. 81] at 67:2-15; Karlon Perdue Decl. ¶ 9 (Ex. 22); KeUndre Johnson Depo. [Ex. 18 to Doc. No. 81] at 222:2-11; Curtis Lindsey Decl. at ¶ 8 (Ex. 27).

²¹⁵ See Defs' Resp. to Pls. Third RFP, No. 6 (**Ex. 20**) (producing only three inmate letters pertaining to the issues raised in this lawsuit from February 2009 to the present); Gordy Notice of Deposition [Ex. 1 to Gordy Depo.] (seeking all written complaints regarding prison conditions, violence, security, or use of force); Gordy Depo. at 8:8-15 (stating that he had none of the items listed in his notice of deposition).

²¹⁶ See Complaints by Inmates (Hetzl 14646-14649) (**Ex. 21**).

VI. FEAR OF ASSAULT.

Incident reports show that many prisoners at Donaldson live in fear that they will be violently assaulted. One man stabbed himself in the stomach with an ice pick so that he would be moved to another housing unit because he was "in debt" to inmates and feared harm.²¹⁷ Another man reported not taking his mental health medication because he was afraid to leave his cell.²¹⁸ Two others claimed they needed knives for protection.²¹⁹

Jeffrey Blackwood was a minimum custody inmate when he arrived at the prison:

Two weeks after I got here, I saw an inmate . . . get stabbed on the basketball court. A week later, I saw an inmate get stabbed two feet from my bed. There was blood all over my bed as well as the entire area.²²⁰

²¹⁷ See Ex. 1, Summary Chart, p. 28; Ex. 1, Incident Report, October 28, 2008, Hetzel 4218 (stating inmate reported to shift commander's office with ice pick "lodged in . . . left side of his stomach" and stating that inmate was transported to the via ambulance for removal of ice pick from stomach).

²¹⁸ See Ex. 1, Summary Chart, p. 17; Ex. 1, Incident Report, May 1, 2008, Hetzel 10162.

²¹⁹ See, e.g., Ex. 1, Incident Report, Sept. 5, 2009, Hetzel 21784-21788 (prisoner informs sergeant during cell search that resulted in confiscation of inmate-made knife and 3 disposable razors that "he needs to have 'protection'"); Ex. 1, Incident Report, Nov. 8, 2009, Hetzel 22082-22086 (prisoner stated that he had an inmate-made knife "in case things go bad in my block.").

²²⁰ Blackwood Decl., Jan. 26, 2010, ¶ 5-6 (Ex. 19).

Mr. Blackwood received a death threat in July 2009, but was reluctant to report it:

Everybody here knows that if an inmate seeks protective custody, the Shift Office tells them to handle their own problems. Most times, the inmates working in and around the shift office tell everyone that you tried to "catch out" (or report that you were in danger from other inmates), and it only makes matters worse.²²¹

Karlon Perdue believes he is not safe, even in the segregation unit at Donaldson:

I have seen inmates pass knives to each other on the segregation yard. I've seen a knife being slid under the door to Q-block, and seen the hall runner deliver the knife to an inmate on the block. At St. Clair Correctional Facility, it is unusual for inmates to have weapons in segregation cells, but at Donaldson, it happens all the time. I almost never go out of my cell to exercise because I am afraid I will be harmed. I have been out to exercise approximately two times since October.²²²

Curtis Lindsey states that another inmate in his segregation block flashed a knife at him and threatened his life repeatedly.²²³ Mr. Lindsey states that he told Warden Gordy about these threats, but that nothing was done in response. The man with the knife then attempted to draw his knife on Lindsey, and an altercation ensued.²²⁴

²²¹ See id. at ¶ 7-8 (Ex. 19).

²²² Karlon Perdue Decl., Jan. 26, 2010, ¶ 13-14 (**Ex. 22**).

²²³ Curtis Lindsey Decl., May 19, 2009 ¶ 8 (**Ex. 27**).

²²⁴ See Lindsey Decl. ¶ 9-10 (Ex. 27); Ex. 1, Summary Chart, p. 40, Ex. 1, Incident Report, May 13, 2009 (Hetzl 18554).

Hubert McKinney was assaulted in 2008 and surgery was required to repair an injury to his eye.²²⁵ Later, in 2009, he received repeated death threats from another inmate in the segregation area.²²⁶ Unable to cope with the constant fear of harm, McKinney hung himself.²²⁷ He was found unconscious and taken by ambulance to the UAB trauma unit.²²⁸

Gregory Wynn believes that he could be the victim of an assault at Donaldson at any time:

I know earlier I said I wasn't scared, but the thing is I still feel that I'm not scared, but it's still a possibility with this environment, I could be the one that get stabbed. I could be one get beat unconscious. (Wynn Depo. [Ex. 5 to Doc. No. 81] at 353).

Mr. Wynn further stated:

When I first came to this facility, the day I stepped into the block. A guy came to me and asked me did I want to buy a knife. . . . He goes . . . man, you're going to need it, man, this is West Jefferson, it's the bottom of the barrel. (Id. at 352).

Charles Malec, who was slashed down the side of his face with a razor while asleep on his bunk, fears being the victim of violence again:

I try not to sleep at all when people are asleep, because I don't want to be asleep and somebody come by and cut me

²²⁵ Hubert McKinney Decl., Feb. 2, 2010, ¶ 4-8 (**Ex. 23**).

²²⁶ See id. at ¶ 13, 15.

²²⁷ See id. at ¶ 15-16.

²²⁸ See id. at ¶ 16.

again while I'm asleep for no reason at all. So I try to stay awake as much as possible. (Malec Depo. [Ex. 9 to Doc. No. 81] at 149).

VII. THE DEPARTMENT'S RESPONSE TO THE SERIOUS RISK OF HARM TO PRISONERS AT DONALDSON.

1. Pre-Litigation Response.

When asked to list the steps the Department took to reduce violence at Donaldson in 2007, the Commissioner listed one step: the purchase of metal detection devices.²²⁹ Associate Commissioner DeLoach further stated that the Department increased "shakedowns" in 2007 and 2008.²³⁰ Neither measure, however, stemmed the swell of violence at Donaldson.²³¹ Numerous assaults with weapons causing serious injury occurred after these measures were implemented. (See supra § III; Ex. 1).

Despite the continuing violence, the Commissioner did not ask anyone to track the number of assaults at the prison.²³² Discovery revealed not a single memorandum or piece of correspondence in which any employee of the Department discussed or referred to the problem of inmate-on-inmate violence at

²²⁹ See Allen Depo. at 26:11-23, 27:1-3. See also Gordy Depo. 215:1-7 (stating that the Department purchased metal detection devices); Lt. Terry Raybon Depo. 134:2-4, 136:9-15 (stating that Donaldson modified steps to detect metal objects).

²³⁰ See Assoc. Comm'r DeLoach Depo. 84:21-23, 85:1-18. See also Gordy Depo. 214:7-9; Hetzel Depo. 176:1-6.

²³¹ See Ex. 1.

²³² See Allen Depo. at 20:20-22, 21:1-13.

Donaldson.²³³ The Commissioner, moreover, could not recall having any conversations about conditions at Donaldson with Associate Commissioner James DeLoach, his chief of operations, from 2007 until after this case was filed.²³⁴ Neither could Mr. DeLoach recall having had a single conversation with anyone at the Department's central office about inmate-on-inmate assaults at Donaldson prior to this lawsuit.²³⁵

2. Post-Litigation Response.

The State took the following steps after suit was filed:

- Between February and April 2009, the Department removed the "third bunks" in cellblocks A, B, C, D, X, and Y, reducing the number of men at the prison by about 160;²³⁶
- In April 2009, the Defendants implemented a policy requiring inmates to wear color-coded wristbands designating their housing areas;²³⁷
- In October 2009, in response to Steve Martin's deposition, testimony, the Department re-arranged bunks in certain south side dorms (but did not reduce the inmate population in these dorms);²³⁸

²³³ See Defs' Resp. to Third Req. for Prod. No. 4 (**Ex. 20**).

²³⁴ See Allen Depo. 18:20-22.

²³⁵ See DeLoach Depo. 65:7-21.

²³⁶ See Gordy Depo. 92:4-12; Hetzel Depo. 64:18-20 (last third bunk was removed April 14, 2009).

²³⁷ See Gordy Depo. 215:18-22; Hetzel Depo. 94:10-23, 95: 5-8 (stating that wristbands were implemented in April 2009).

²³⁸ See Gordy Depo. 52:15-23; 53:1-15; 54:6-9

- In July or August 2009, the Department prohibited inmates in the south side dorms from hanging towels to cover their beds;²³⁹
- In July or August 2009, the Department instituted a policy requiring staff to bring lunches in clear containers;²⁴⁰
- In October 2009, the Department changed the responsibilities of roving officers in the south side dorms, requiring them to be present inside the dorms, instead of being stationed at the "officer shack," a significant distance from the dorms.²⁴¹

The Commissioner and Associate Commissioner indicated that no further remedial steps are planned.²⁴²

SUMMARY JUDGMENT STANDARD

"Summary judgment is appropriate 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'" Greenberg v. BellSouth Telecomm., Inc., 498 F .3d 1258, 1263 (11th Cir.2007); Fed. R. Civ. P. 56(c).

²³⁹ See id. at 57:14-20.

²⁴⁰ See id. at 216:1-8.

²⁴¹ See id. at 218:20-23, 219:1-8.

²⁴² See Allen Depo. 89:16-20 (stating that he could not recall making any requests of his staff to implement any change at Donaldson in response to the allegations in this lawsuit); DeLoach Depo. 103:16-20 (stating that he took no steps after reading the Complaint); 87:21-23, 88:1-10 (stating there are no future changes planned in response to Mr. Martin's report).

LEGAL ARGUMENT

The Eighth Amendment imposes a duty on prison officials to "protect prisoners from violence at the hands of other prisoners." Farmer v. Brennan, 511 U.S. 825, 833 (1994). To demonstrate that prison officials violated their duty to protect prisoners from violence, plaintiffs must prove that: (1) they are incarcerated under conditions imposing a substantial risk of serious harm; (2) the prison officials have had knowledge of and been indifferent to that risk; and (3) the prison officials' indifference to the conditions caused the risk of serious harm to prisoners. See Hale v. Tallapoosa County, 50 F.3d 1579, 1582 (11th Cir. 1995). If Plaintiffs prove those three elements, they are entitled to relief as a matter of law. The Defendants' lack of funding, moreover, is not a defense to an injunctive action of this kind. See Laube, 234 F. Supp. 2d at 1248. Here, Plaintiffs have proven all three elements through depositions, declarations, expert testimony, and the Department's own records, and the State's lack of funding is not a defense.

I. THERE IS A SUBSTANTIAL RISK OF SERIOUS HARM AT DONALDSON CORRECTIONAL FACILITY.

To meet the objective component of the Eighth Amendment inquiry, Plaintiffs must show they are "incarcerated under conditions posing a substantial risk of serious harm." Farmer, 511 U.S. at 834. Plaintiffs need not show that the risk was

from a particular inmate or inmates. Id. at 843 (“[I]t does not matter whether the risk comes from a single source or multiple sources. . . .”). Rather, the risk can stem from generalized conditions of dangerousness. See Hale, 50 F.3d at 1581-84 (plaintiff survived summary judgment where he alleged that fights at the jail occurred regularly and caused injuries requiring medical attention); LaMarca v. Turner, 995 F.2d 1526, 1535 (11th Cir. 1993) (explaining that “unjustified constant and unreasonable exposure to violence” violates Eighth Amendment). See Krein v. Norris, 309 F.3d 487, 489-90 (8th Cir. 2002) (denying summary judgment to defendants where: (1) one officer supervised three barracks housing 150 men, (2) the level of violence in the dorm in question was five times higher than other dorms, (3) the Department failed to keep track of the number and locations of assaults).²⁴³ Furthermore, “conditions of confinement may establish an Eighth Amendment violation ‘in combination’ when each would not do so alone, but only when they have a mutually enforcing effect that produces the deprivation

²⁴³ In Krein, the plaintiff sustained a broken jaw due to an assault and presented evidence that “inadequate security” caused the injury. 309 F.3d at 489-90. The defendants argued they were not liable because the assault was a “surprise attack.” Id. at 491. The Eighth Circuit upheld the denial of summary judgment to defendants, explaining: “[p]laintiff in the present case has specifically alleged that ‘by failing to provide adequate security in an open barracks,’ defendants were deliberately indifferent to a risk of harm to plaintiff.” Id. at 491.

of a single, identifiable human need." Wilson v. Seiter, 501 U.S. 294, 304 (1991).

The following factors, when combined, demonstrate a significant risk of harm to men at Donaldson:

First, the sheer magnitude of inmate-on-inmate assaults at Donaldson far surpasses the level of violence in other cases in which the Eleventh Circuit found a substantial risk of harm to inmates. In Hale, 50 F.3d at 1583, for example, the court found a serious risk of harm where inmate violence "require[d] medical attention and even hospitalization *on occasion*" (emphasis added). In Marsh v. Butler County, 268 F.3d 1014, 1033, n.12, 1034 (11th Cir. 2001), a serious risk of harm existed where two prisoners were injured, even in the absence of numerous previous assaults. In Gates v. Collier, 501 F.2d 1291, 1308-09 (5th Cir. 1974), plaintiffs were subject to a serious risk of harm where they proffered evidence of 27 assaults with weapons. In LaMarca, 995 F.2d at 1533, a serious risk of assault was established where plaintiffs presented evidence of four rapes, one attempted rape, one assault, and one stabbing. And in Laube, 234 F. Supp. 2d at 1236, this Court granted plaintiffs' preliminary injunction motion on their "failure to protect"

claim where there were numerous fights and two incidents of serious violence.²⁴⁴

In contrast to the prisons in the cases cited above, at Donaldson, numerous inmates have sustained serious injuries, including punctured lungs, loss of vision, loss of hearing, broken bones, lacerations, head injuries, and stab wounds. (See Ex. 1). Plaintiffs' expert, Steve Martin, opined that Donaldson has "a significantly higher level of violence than you see in a . . . safe operation." (Martin Depo. at 97:21-23, 98:1). The incidence of trauma described in Exhibit 1 exceeds that described in any case in the Eleventh Circuit in the past twenty years.²⁴⁵

Second, overcrowding at Donaldson increases tensions and raises the risk of assault. See supra § V(A). See also Laube, 234 F. Supp.2d at 1236 ("The large number of inmates in Tutwiler has increased the risks to inmate safety").

Third, there are too few officers to supervise prisoners. See supra § V(B). The Eleventh Circuit has found that failing to provide adequate supervision in correctional facilities

²⁴⁴ Cf. Purcell v. Toombs County, 400 F.3d 1313, 1323, n.21 (11th Cir. 2005) (finding "the record [was] insufficient to show that serious inmate-on-inmate violence was the norm" where plaintiff offered evidence of three previous fights, only one of which required a trip to the hospital).

²⁴⁵ See e.g. Marsh, 268 F.3d at 1033, n.12, 1034; Hale, 50 F.3d at 1583; LaMarca, 995 F.2d at 1533.

creates a risk of serious harm. See Hale, 30 F.3d at 1581 (only one jailor on duty when prisoner was assaulted); Harris v. Thigpen, 941 F.2d 1495, 1505 (11th Cir. 1991) (suggesting that inadequate staffing may rise to deliberate indifference to prisoner safety); Laube, 234 F.Supp.2d at 1233 ("In an overcrowded open dorm, where weapons are readily available . . . adequate staffing is an absolute necessity.").²⁴⁶

Fourth, the availability of weapons adds to the risk to inmates' safety. See supra § V(C); Ex. 18. See also Marsh, 268 F.3d at 1033, n.12, 1034 (widespread possession of weapons by inmates was a factor that weighed in favor of finding risk of serious harm); Gates, 501 F.2d at 1308 (injuries inflicted with weapons weighed in favor of finding Eighth Amendment violation). In Laube, this Court held that the plaintiffs established a risk of harm from assault where "two inmates were cut with disassembled razors" and "[a]nother inmate was threatened with broken mop and broom handles and locks placed into socks." Laube, 234 F. Supp. 2d at 1236. At Donaldson, by contrast,

²⁴⁶ See Krein, 209 F.3d at 498-90 (affirming denial of summary judgment to defendants where inmates in open barrack facility fatally attacked another inmate and where barrack was understaffed for a period of several months). Cf. Purcell v. Toombs County, 400 F.3d 1313, 1323, n.18 (11th Cir. 2005)(stating that nothing in the record demonstrated that actual jail staffing level was insufficient and holding "[n]o expert testified that the Jail, given its inmate capacity, was understaffed.").

inmates are frequently stabbed with lethal weaponry.²⁴⁷ Inmate-made knives and ice picks are frequently found at the prison, even in segregation areas. See supra § V(C).

Fifth, inmates at Donaldson have been able to leave their assigned cellblocks and roam about the prison, sometimes for the purpose of assaulting other inmates. See supra § V(D). The Eleventh Circuit held that failure to control inmate movement in a prison weighs in favor of finding a serious risk of harm. See LaMarca, 995 F.2d at 1532 (inmates in general population were able to enter confinement area of prison); Marsh, 268 F.3d at 1028 (“[C]onditions in a jail facility that allow prisoners ready access to weapons, fail to provide an ability to lock down inmates, and fail to allow for surveillance of inmates pose a substantial risk of serious harm to inmates.”).

Sixth, there is significant trafficking in contraband at Donaldson. See supra § V(E); LaMarca 995 F.2d at 1532 (serious risk of harm established where “[i]nmates carried knives and openly used drugs.”).

Seventh, there is no grievance procedure at Donaldson and no other coordinated system through which prisoners can report a fear of harm. See supra § V(F). The absence of a grievance system further increases the risk of harm to inmates. See

²⁴⁷ See Weapons Chart (Ex. 18).

Tafoya v. Salazar, 516 F.3d 912, 920 (10th Cir. 2008)

(defendant's failure to implement a grievance procedure through which inmates could make complaints without fear of retribution supported deliberate indifference allegation).

The foregoing factors, in combination, have created an unreasonable risk of harm to plaintiffs. See Laube, 234 F. Supp. 2d at 1245 (“[I]t is the combination of substantial overcrowding and significantly inadequate supervision in open dorms that deprives inmates of their right to be protected from the constant threat of violence”) (internal quotations omitted).

II. THE DEFENDANTS HAVE HAD KNOWLEDGE OF, AND BEEN INDIFFERENT TO, THE RISK OF SERIOUS HARM AT DONALDSON CORRECTIONAL FACILITY.

A. DEFENDANTS KNOW ABOUT THE SUBSTANTIAL RISK OF HARM.

Defendants have knowledge of constitutionally deficient conditions if a “substantial risk of inmate attacks” was “longstanding, pervasive, well-documented, or expressly noted by prison officials in the past.” Farmer, 511 U.S. at 842-43.

The following factors put Defendants on notice of a significant risk to prisoners' safety:

- Death of Inmate Charles Agee (January 1, 2005): Charles Agee, a man with schizophrenia, died after officers used force on him.²⁴⁸ The Jefferson County Coroner ruled his

²⁴⁸ See Agee Death Investigation Report, filed August 14, 2008, Bogus v. Dep't of Corr., Civil Action No. 7:06-cv-1667-RDP (N.D. Ala.).

death a homicide.²⁴⁹ Photographs of Mr. Agee, lying in a pool of blood, are attached as Exhibit 25.

- Letter from former Donaldson Warden Stephen Bullard (March 1, 2005): In 2005, former Warden Bullard wrote a letter to then Commissioner Campbell stating that Donaldson was dangerously understaffed.²⁵⁰
- Staffing study (December 21, 2006): The Department is operating with half the number of security staff recommended by its own staffing study.²⁵¹
- Homicide (January 1, 2006): Inmate Arthur Lee Scruggs was stabbed to death at Donaldson.²⁵²
- Letter from Southern Center for Human Rights (SCHR) to Commissioner Allen (March 15, 2007): SCHR sent Commissioner Allen a letter expressing concern about violence at Donaldson, listing Scruggs' death and over 30 violent incidents.²⁵³
- Meeting Between Commissioner Allen and SCHR (April 2007): Representatives of SCHR met with Commissioner Allen and his colleagues to discuss problems at Donaldson and requests for information about assaults there.²⁵⁴

²⁴⁹ See Autopsy Report of Charles Agee (**Ex. 26**).

²⁵⁰ See Letter from Bullard to Campbell, March 1, 2005 (**Ex. 14**); Stephen Bullard Depo., Nov. 20, 2007, Bogus v. Ala. Dep't of Corr., Civil Action No. 7:06-cv-1667-RDP (N.D. Ala.) at 74:9-17 (stating under oath that he wrote a letter to Commissioner Campbell on March 1, 2005)(**Ex. 15**).

²⁵¹ See Comm'r Allen Depo. 79:11-23, 80:1-9 (Ex. 13).

²⁵² See Ex. 1, Incident Report, ADOC II 54-61.

²⁵³ See Letter to Comm'r Allen, Mar. 15, 2007 (Ex. 8); Allen Depo. 25:8-9 (Ex. 13).

²⁵⁴ See Allen Depo. 23:19-21 (stating that he recalled the meeting).

- Open Records Act Lawsuit (September 20, 2007): SCHR filed a lawsuit challenging the Department's failure to provide public records regarding conditions at Donaldson.²⁵⁵
- Grievance by Officer Richard Cooper (May 2008): Officer Cooper, a 24-year veteran of the Department, wrote a grievance to Warden Hetzel stating that the "manning level" of 43 officers per shift "does not provide enough manpower for regular posts."²⁵⁶
- Letter from Plaintiffs' counsel (May 12, 2008): Plaintiffs' counsel reported alleged instances of excessive force by officers at Donaldson.²⁵⁷
- Failure to Report Critical Incidents (2008-2009): The Department significantly underreported violent incidents at Donaldson to the public from at least April 2008 to April 2009.²⁵⁸
- Incident Reports Documenting Violence: The defendant-wardens reviewed all incident reports in which assaults were documented.²⁵⁹

The foregoing information was sufficient to put the State on notice of the risk of harm to inmates. See LaMarca, 995 F.2d at 1536 (incident reports supported finding that defendants knew

²⁵⁵ See Allen v. Barksdale, 2009 WL 2997601 (Ala. Sept. 18, 2009) (affirming trial court's order requiring Department to produce records under the Open Records Act).

²⁵⁶ See Officer Cooper Grievance (Ex. 16).

²⁵⁷ See Letter to ADOC [Ex. 23 to Doc. No. 81].

²⁵⁸ See Statement of Facts § IV.

²⁵⁹ Hetzel Depo. 12:18-22 (Warden Hetzel reviews incident reports "daily"); Edwards Depo. 52:4-11 ("[A]ll the captains and all three wardens [at Donaldson] review all incident reports"); Hetzel Depo. 21:4-11; 22:9-20 (incident reports are discussed at daily morning meeting among Warden Hetzel and his "direct subordinates, captains and wardens").

that a risk of violence existed); Marsh, 268 F.3d at 1027 (plaintiffs sufficiently alleged Eighth Amendment violation where "letter from prisoner-rights advocates" told defendants that conditions left inmates vulnerable to assault).

B. DEFENDANTS' RESPONSE TO THE SERIOUS RISK OF HARM HAS NOT PROTECTED INMATES FROM INJURY.

In determining whether the State's response to the risk of harm at Donaldson has been reasonable, this Court must look not just to the actions of the individual defendants, but also to the "reasonableness of the State of Alabama's responses."²⁶⁰ In so doing, it is appropriate to consider any "historical deliberate indifference of the responsible entity."²⁶¹

Defendants' post-litigation measures at Donaldson (see supra Statement of Facts, § VI) are an improvement, but do not go nearly far enough to solve the intractable problems at the prison. See LaMarca, 995 F.2d at 1541-42 (reforms enacted after filing of suit challenging prison violence did not preclude injunctive relief);²⁶² Hale, 30 F.3d at 1584 (sheriff's

²⁶⁰ Laube, 234 F. Supp.2d at 1249 ("The state officials are sued in their official capacities; therefore, the real parties at interest are the responsible entities: the Department of Corrections and State of Alabama.").

²⁶¹ See id.

²⁶² "Voluntary cessation of a challenged practice rarely moots a federal case," City News and Novelty, Inc. v. City of Waukesha, 531 U.S. 278, 284 n.1 (2001), and a defendant who voluntarily ceases challenged conduct "bears the formidable

protestation that he was not deliberately indifferent because he "worked toward construction of a new jail" was insufficient to support summary judgment in his favor because a jury could find that he should have taken "interim measures" to reduce violence).²⁶³

In Laube v. Haley, 234 F.Supp.2d 1227, 1248 (M.D. Ala. 2002), this Court came to a similar conclusion in analyzing claims of deliberate indifference raised by women at Tutwiler

burden of showing that it is absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur," Friends of the Earth, Inc. v. Laidlaw Env'tl. Serv. (TOC), Inc., 528 U.S. 167, 189-92 (2000); see also Sierra Club v. EPA, 315 F.3d 1295, 1303 (11th Cir. 2002) ("Where a defendant voluntarily ceases challenged conduct, the case is not moot because nothing would prevent the defendant from resuming its challenged action."). This Circuit has almost never found that voluntary cessation moots a controversy, especially where the changes occur in the midst of litigation. See Shelly v. MRI Radiation Network, P.A., 505 F.3d 1173, 1186 (11th Cir. 2007) (collecting Eleventh Circuit and Supreme Court case law); see also Jensen v. Clarke, 94 F.3d 1191, 1200-01 (8th Cir. 1996) (holding injunction in prisoners' rights case was appropriate despite defendants' post-complaint actions); Madrid v. Gomez, 889 F. Supp. 1146, 1281 n.230 (N.D. Cal. 1995) ("[d]efendants' recent policy changes relating to the use of force did not moot plaintiffs' request for injunctive relief [because they were] litigation-inspired [and] transitory rather than permanent.").

²⁶³ Tafoya v. Salazar, 516 F.3d 912, 918 (10th Cir. 2008) ("A prison official may be liable for a substantial risk of serious harm to inmates in spite of efforts reasonably calculated to reduce the risk, if he intentionally refuses other reasonable alternatives and the dangerous conditions persist."); Lewis v. Washington, 265 F. Supp. 2d 939, 943 (N.D. Ill. 2003) (finding that the plaintiffs' claims regarding the conditions of protective custody were not moot simply because certain changes had already been made regarding those conditions that allegedly eliminated the violations).

Prison. In Laube, just as in this case, a putative inmate class sued the warden, commissioner, and governor for injunctive relief to remedy long-standing conditions and security problems. Judge Thompson granted the plaintiffs' motion for a preliminary injunction, despite the fact that the then-current warden and new commissioner had attempted to improve the situation at Tutwiler. Judge Thompson wrote:

Warden Deese and Commissioner Haley testified as to the various measures implemented in response to the conditions at Tutwiler. These measures include increased community-corrections programs, increased programs within Tutwiler, overtime worked by officers, inmate counseling, and requests for more officers. The court applauds the efforts taken by the defendants thus far as these are necessary components to rectifying the unsafe conditions at Tutwiler.

The defendants' efforts are comparable to those of the defendant in LaMarca. There, the district court found that Lambdin, the new superintendent of the prison in question, was a "dedicated public servant who is trying very hard to make GCI an efficient and effective correctional institute." LaMarca, 995 F.2d at 1542 (citation omitted). Lambdin was a new superintendent and not responsible for any of the unconstitutional conditions at the prison; furthermore, he had remedied these conditions to the point that inmates had "constitutionally adequate, protection from violence." Id. Nevertheless, the Eleventh Circuit rejected Lambdin's argument that, because he had acted responsibly during his time as superintendent, the court could not find deliberate indifference. The court upheld parts of the injunction entered against the prison on the grounds that Lambdin had not taken sufficient steps to ensure that the prisons' past wrongs would not be repeated. Id.

Like the superintendent in *LaMarca*, the defendants in this case are dedicated public servants who have acted to address problems at Tutwiler. Nonetheless, the court must still find deliberate indifference because the defendants' efforts simply do not go far enough; the measures they have taken have had negligible impact on the massive danger

posed to inmates. Counseling and anger management have a limited reach in their effectiveness, as do overtime and prisoner release programs. As the court stated above, several factors together create the unconstitutional conditions at Tutwiler. The defendants' measures are superficial and only address some of the factors creating Tutwiler's dangerous environment.

While requests for more officers are a necessity in staffing Tutwiler adequately, the most obvious necessity is honoring those requests. The State of Alabama has plainly failed to provide Tutwiler with the staff it needs to ensure inmate safety. In the month of July, there were only two days in which 16 officers, the minimum number needed to protect inmates, were on duty. Filling staffing voids through the use of overtime can only do so much; officers working overtime tire and, ultimately, cannot compensate for the severe dearth of officers at Tutwiler. The defendants' response to this situation has been patently inadequate; if Tutwiler continues to run at its current inmate capacity, nothing short of additional staffing is a reasonable response to the facility's dire need for officers. In short, the measures taken by the defendants are a laudable step in the right direction, but they are fundamentally inadequate, unreasonable responses to the dangers posed by poorly guarded, overcrowded open dorms. Therefore, the court finds that the defendants were, and continue to be, deliberately indifferent to the substantial risk of serious harm posed to the plaintiffs and that the plaintiffs are substantially likely to succeed on this claim.

Laube, 234 F.Supp.2d at 1250-51 (emphasis added).

Here, as in Laube, the purchase of metal detection devices, the relatively minor reduction in population, the increase in "shakedowns," and the re-arrangement of bunks, while positive, are "superficial" changes that will not address the "massive danger" to inmates. Id. at 1251.²⁶⁴ Here also, as in Laube,

²⁶⁴ Plaintiffs note that all the post-litigation steps listed above (see supra Statement of Facts § VI) could have been taken before the Complaint in this case was filed.

nothing short of additional officers is a reasonable response to the serious risk of harm. See id.

Nor is there any guarantee in this case that the changes implemented to date will endure in the absence of court-ordered relief. This Circuit has often noted that corrective action after a lawsuit is filed is a typical and commendable occurrence, but it does not negate the past. In La Marca, 995 F.2d 1526, the Court of Appeals found that plaintiffs presented sufficient evidence to avoid summary judgment even though the superintendent of the facility in question provided evidence that he had: (1) attempted to secure additional funds, (2) made improvements to the physical plant, and (3) expanded officer recruitment efforts. The court stated:

Subsequent events, such as improvements in the allegedly infirm conditions of confinement, while potentially relevant, are not determinative. When a defendant corrects the alleged infirmity after suit has been filed, a court may nevertheless grant injunctive relief unless the defendant shows that absent an injunction, the institution would not return to its former, unconstitutionally deficient state.

La Marca, 995 F.2d at 1541-42. See also Hall v. Bd. of School Comm'rs, 656 F.2d 999, 1000-01 (5th Cir. Unit B 1981)

("defendants must offer more than their mere profession that the conduct has ceased and will not be revived").

Perhaps more significantly, the steps defendants have taken to date are not sufficient to protect plaintiffs from harm.

Since this lawsuit was filed, there have been numerous violent incidents requiring prisoners to be hospitalized.²⁶⁵ Weapons and drugs are still readily available.²⁶⁶ And the prison is significantly understaffed.²⁶⁷ Finally, given Defendants' position that no serious risk of harm currently exists or ever existed at Donaldson, the constitutional violations identified herein will not likely be redressed absent class-wide relief.²⁶⁸

III. THE DEPARTMENT'S INDIFFERENCE TO THE CONDITIONS AT DONALDSON HAS CAUSED THE RISK OF SERIOUS HARM TO PRISONERS.

Plaintiffs satisfy the causation element of their Eighth Amendment claim because the risk of harm to Plaintiffs is a direct result of the State's historical indifference to

²⁶⁵ See Ex. 1.

²⁶⁶ See Charles Malec Decl., Feb. 2010, ¶ 9 (Ex. 10) (stating that he still sees prisoners using drugs in his dorm on a daily basis).

²⁶⁷ See supra, Statement of Facts § V(B).

²⁶⁸ See Madrid, 889 F. Supp. at 1281 ("Our assessment of defendants' current attitudes and conduct only reinforces our view that injunctive relief is not only appropriate in this case, but perhaps indispensable, if constitutional dictates-not to mention considerations of basic humanity-are to be observed in the prison Throughout this litigation, defendants have . . . expended most of their energies attempting to deny or explain away the evidence of such problems. Even when defendants modify certain policies . . . , they do not argue that such changes evidence an intent to address the problems raised by this complaint; rather, defendants typically assert that they were precipitated by unrelated matters.").

conditions at Donaldson. See Hale, 50 F.3d at 1585 (finding that causation element can be satisfied by showing of excessive risk of harm at the facility); Marsh, 268 F.3d at 1029 (“Conditions, like those in this case, where violent prisoners are allowed free reign of a jail with easy access to weapons without proper supervision by guards could be found to have caused the assaults on Plaintiffs”); LaMarca, 995 F.2d at 1539 (“The wrong in Eighth Amendment cases is the deliberate indifference to a constitutionally infirm condition; that wrong must, in turn, have been the proximate cause of the plaintiffs’ injuries, here the injuries brought about by the assaults.”).

IV. THE DEFENDANTS’ LACK OF FUNDS IS NO DEFENSE TO THIS EIGHTH AMENDMENT ACTION FOR INJUNCTIVE RELIEF.

When prison officials are sued solely in their official capacities, the lack of funds available to them is not an adequate defense to a finding of a constitution[al] violation on their part.

Laube, 234 F.Supp.2d at 1248. See also Newman v. Alabama, 559 F.2d 283, 286 (5th Cir. 1977), rev’d in part on other grounds sub nom, Alabama v. Pugh, 438 U.S. 781 (1978) (“It should not need repeating that compliance with constitutional standards may not be frustrated by legislative inaction or failure to provide the necessary funds.”); Ancata v. Prison Health Servs., Inc., 769 F.2d 700, 705 (11th Cir. 1985) (“Lack of funds for facilities cannot justify an unconstitutional lack of competent medical care and treatment for inmates.”); Moore v. Morgan, 922

F.2d 1553, 1557 n.4 (11th Cir. 1991); Gates v. Collier, 501 F.2d 1291, 1319 (5th Cir. 1974).

CONCLUSION

Plaintiffs respectfully request that this Court grant plaintiffs' motion for partial summary judgment.

Respectfully submitted this 18th day of February 2010.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Brief in Support of Motion for Summary Judgment on the parties by causing a true and correct copy thereof to be delivered by the Court's ECF filing system to defendants' counsel of record at the following addresses:

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