

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION**

\_\_\_\_\_  
)  
MIRACLE NWAKANMA, )  
CORNELIUS SPENCER, )  
GREGORY HAINES, and )  
ERIC TOWNS, )

Plaintiffs, )

v. )

)  
CAPTAIN TIMOTHY CLARK, )  
LIEUTENANT SHERMAN DAVIS, )  
OFFICER KENNY GILREATH, )  
OFFICER JACK HAMILTON, )  
OFFICER JOHN LYONS, )  
OFFICER BRIAN McNABB, )  
OFFICER BRIAN McGATHY, )  
OFFICER BILLY PORTER, )  
OFFICER JAYSON QUARLES, )  
OFFICER NICHOLAS SOUTHER, )  
OFFICER NICK STEWART, and )  
OFFICER KEVIN WOOTEN, )  
correctional officers and supervisors, )  
Hays State Prison, in their official )  
and individual capacities, )

Defendants. )  
\_\_\_\_\_ )

COMPLAINT

CIVIL ACTION NO. \_\_\_\_\_

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiffs Miracle Nwakanma, Cornelius Spencer, Gregory Haines, and Eric  
Towns (collectively, "Plaintiffs") by counsel, state as follows for their Complaint:

## I. PRELIMINARY STATEMENT

1. This is a civil rights action brought by four state prison inmates, pursuant to 42 U.S.C. §1983. Plaintiffs are seeking compensatory and punitive damages for the August 12, 2010, beatings inflicted upon them by officers employed by the Georgia Department of Corrections (“GDC”). Plaintiffs are also requesting injunctive relief, seeking an order to end the pattern and practice of physical abuse perpetrated by correctional officers upon Plaintiffs and others incarcerated at Hays State Prison. Absent such an injunction, Plaintiffs will be subject to and unable to avoid a real and immediate threat of future illegal and retaliatory beatings.

2. On August 12, 2010, the Plaintiffs were assaulted at Hays State Prison by members of the GDC’s Correctional Emergency Response Team (“CERT”) and other officers. All Plaintiffs were beaten while handcuffed and not capable of resistance in the prison’s Special Management Unit (“SMU”), except Plaintiff Haines who was assaulted, also while handcuffed, in dorm D2.

3. While handcuffed, Plaintiff Nwakanma was punched, stomped on, kicked in the groin and in the face, struck with a flashlight, hit with batons, and beaten until he was unconscious. While handcuffed, Plaintiff Spencer was punched, kicked, and beaten with a baton-like instrument until he vomited and lost

consciousness. While Plaintiff Towns was handcuffed, officers kicked him in the head, beat him with a baton on his bare feet, and struck him with a baton in the head until he was unconscious. While handcuffed, Plaintiff Haines was punched, kneed in the face, and kicked in the face. At no time did any Plaintiff offer any resistance or do or fail to do any act that justified the use of force.

4. As a result of these assaults, the Plaintiffs suffered injuries including: a “possible healing left mandibular fracture” (Plaintiff Nwakanma), jaw pain and fractured teeth (Plaintiff Nwakanma), a facial injury requiring oral surgery to remove tooth fragments from the lip (Plaintiff Nwakanma), loss of consciousness (Plaintiffs Nwakanma, Spencer, and Towns), fractured toes (Plaintiffs Nwakanma and Spencer), contusions on the feet impairing the ability to walk unaided (Plaintiff Towns), a baseball-sized hematoma to the head (Plaintiff Spencer), a lacerated mouth (Plaintiff Haines), and possible neurological damage including memory loss, fatigue, and inability to concentrate (Plaintiffs Nwakanma and Towns).

5. Despite these injuries and additional injuries suffered by the Plaintiffs, the officers who participated in these assaults did not file any incident reports indicating that they had used force on any inmates assaulted in the SMU. No Plaintiffs were disciplined for acts occurring in the SMU on August 12, 2010 that would have necessitated the use of force.

6. While correctional officers perpetrated these assaults, supervisory personnel are also liable for Plaintiffs' injuries. Defendants Captain Clark and Lieutenant Davis witnessed the assaults that occurred in D2 dorm, but failed to take reasonable steps to protect Plaintiffs from other officers' use of excessive force. Defendants Captain Clark and Lieutenant Davis further did nothing to discourage the beatings described herein, but rather directed, incited, and explicitly encouraged the unconstitutional assaults.

7. Defendants' acts and omissions contributing to these assaults directly and proximately resulted in the violation of Plaintiffs' right to be free from cruel and unusual punishment under the Eighth Amendment of the United States Constitution.

8. Plaintiffs seek compensatory and punitive damages against the defendant correctional officers for maliciously assaulting them in order to cause harm. Plaintiffs also seek compensatory and punitive damages and injunctive relief against Defendants Captain Clark and Lieutenant Davis for their past and ongoing deliberate indifference to Plaintiffs' safety.

## **II. JURISDICTION**

9. This action is brought pursuant to 42 U.S.C. § 1983. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, and § 1343 (a)(3) and

(4). Plaintiffs' request for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202.

### **III. VENUE**

10. Venue is proper in this District and in the Rome Division because the incidents occurred at Hays State Prison, located in Trion, Georgia. Hays State Prison is situated within the district and divisional boundaries of the Northern District of Georgia, Rome Division.

### **IV. PLAINTIFFS**

11. Miracle Nwakanma, who is African American, was at all relevant times an inmate in the custody of the GDC. He was incarcerated at Hays State Prison on August 12, 2010. He is presently incarcerated at Augusta State Medical Prison in Grovetown, Georgia. Plaintiff Nwakanma is a citizen of the United States and the State of Georgia.

12. Cornelius Spencer, who is African American, was at all relevant times an inmate in the custody of the GDC. He was incarcerated at Hays State Prison on August 12, 2010. He is presently incarcerated at Macon State Prison in Oglethorpe, Georgia. Plaintiff Spencer is a citizen of the United States and the State of Georgia.

13. Gregory Haines, who is white, was at all relevant times an inmate in the custody of the GDC. He was incarcerated at Hays State Prison on August 12, 2010. He is presently incarcerated at Phillips State Prison in Buford, Georgia. Plaintiff Haines is a citizen of the United States and the State of Georgia.

14. Eric Towns, who is African American, was at all relevant times an inmate in the custody of the GDC. He was incarcerated at Hays State Prison on August 12, 2010. He is presently incarcerated at Ware State Prison in Waycross, Georgia. Plaintiff Towns is a citizen of the United States and the State of Georgia.

#### V. DEFENDANTS

15. Captain Timothy Clark is and was at all times relevant to this action a captain at Hays State Prison, in the employ of the GDC. Captain Clark was present at Hays State Prison on August 12, 2010 and personally witnessed the assaults that occurred in D2 dorm, as described herein. Captain Clark was present at the scene of the assaults in D2 dorm, but failed to take reasonable steps to protect the Plaintiffs from other officers' use of excessive force, despite having the realistic opportunity to do so. Captain Clark further personally incited, directed, and ratified the unconstitutional beatings described herein. Captain Clark is sued in his official and individual capacities.

16. Lieutenant Sherman Davis is and was at all times relevant to this action a lieutenant at Hays State Prison, in the employ of the GDC. Lieutenant Davis was present at Hays State Prison on August 12, 2010, and was personally present for the assaults that occurred in D2 dorm, as described herein. Lieutenant Davis was present at the scene of the assaults in D2 dorm, but failed to take reasonable steps to protect the Plaintiffs from other officers' use of excessive force, despite having the realistic opportunity to do so. Lieutenant Davis further personally incited, directed, and ratified the unconstitutional beatings described herein. Lieutenant Davis is sued in his official and individual capacities.

17. Officer Kenny Gilreath was at all times relevant to this action a CERT officer at Hays State Prison, in the employ of the GDC. On August 12, 2010, he maliciously and violently assaulted Plaintiffs Nwakanma, Spencer, and Towns, while they were in handcuffs, causing them injury. Officer Gilreath subjected Plaintiffs to excessive and retaliatory force without legitimate reason and for the purpose of inflicting harm. He is sued in his official and individual capacities.

18. Officer Jack Hamilton was at all times relevant to this action a CERT officer at Hays State Prison, in the employ of the GDC. On August 12, 2010, he maliciously and violently assaulted Plaintiffs Nwakanma, Spencer, and Towns, while they were handcuffed, causing them injury. Officer Hamilton subjected

Plaintiffs to excessive and retaliatory force without legitimate reason and for the purpose of inflicting harm. He is sued in his official and individual capacities.

19. Officer John Lyons was at all times relevant to this action an officer at Hays State Prison, in the employ of the GDC. On August 12, 2010, he maliciously and violently assaulted Plaintiff Haines, while Haines was handcuffed, causing him injury. Officer Lyons subjected Haines to excessive and retaliatory force without legitimate reason and for the purpose of inflicting harm. He is sued in his official and individual capacities.

20. Officer Brian McNabb was at all times relevant to this action a CERT officer at Hays State Prison, in the employ of the GDC. On August 12, 2010, he maliciously and violently assaulted Plaintiffs Nwakanma, Spencer, and Towns, while they were handcuffed, causing them injury. Officer McNabb subjected Plaintiffs to excessive and retaliatory force without legitimate reason and for the purpose of inflicting harm. He is sued in his official and individual capacities.

21. Officer Brian McGathy was at all times relevant to this action an officer at Hays State Prison, in the employ of the GDC. On August 12, 2010, he maliciously and violently assaulted Plaintiff Haines, while Haines was handcuffed, causing him injury. Officer McGathy subjected Haines to excessive and retaliatory



force without legitimate reason and for the purpose of inflicting harm. He is sued in his official and individual capacities.

22. Officer Billy Porter was at all times relevant to this action a CERT officer at Hays State Prison, in the employ of the GDC. On August 12, 2010, he maliciously and violently assaulted Plaintiffs Nwakanma, Spencer, and Towns, while they were handcuffed, causing them injury. Officer Porter subjected Plaintiffs to excessive and retaliatory force without legitimate reason and for the purpose of inflicting harm. He is sued in his official and individual capacities.

23. Officer Jayson Quarles was at all times relevant to this action a CERT officer at Hays State Prison, in the employ of the GDC. On August 12, 2010, he maliciously and violently assaulted Plaintiffs Nwakanma, Spencer, and Towns, while they were handcuffed, causing them injury. Officer Quarles subjected Plaintiffs to excessive and retaliatory force without legitimate reason and for the purpose of inflicting harm. He is sued in his official and individual capacities.

24. Officer Nicholas Souther was at all times relevant to this action an officer at Hays State Prison, in the employ of the GDC. On August 12, 2010, he maliciously and violently assaulted Plaintiff Haines, while Haines was handcuffed, causing him injury. Officer Souther subjected Haines to excessive and retaliatory

force without legitimate reason and for the purpose of inflicting harm. He is sued in his official and individual capacities.

25. Officer Nick Stewart was at all times relevant to this action a CERT officer at Hays State Prison, in the employ of the GDC. On August 12, 2010, he maliciously and violently assaulted Plaintiffs Nwakanma, Spencer, and Towns, while they were handcuffed, causing them injury. Officer Stewart subjected Plaintiffs to excessive and retaliatory force without legitimate reason and for the purpose of inflicting harm. He is sued in his official and individual capacities.

26. Officer Kevin Wooten was at all times relevant to this action an officer at Hays State Prison, in the employ of the GDC. On August 12, 2010, he maliciously and violently assaulted Plaintiff Haines, while Haines was handcuffed, causing him injury. Officer Wooten subjected Haines to excessive and retaliatory force without legitimate reason and for the purpose inflicting harm. He is sued in his official and individual capacities.

27. The Defendants are citizens of the United States and the State of Georgia. At all times relevant herein, the Defendants acted under color of state law and on behalf of the Georgia Department of Corrections.

## **VI. STATEMENT OF FACTS**

### **A. Events Preceding the August 12, 2010 Assaults**

28. The events upon which this action is based occurred on the afternoon of August 12, 2010. At that time, Plaintiffs were inmates at Hays State Prison and were housed in dorm D2.

29. At approximately 2:00 p.m. on August 12, 2010, Plaintiffs Nwakanma, Spencer, Haines, and Towns heard a commotion in their prison dorm. A group of inmates had gathered in the front of the dorm and were looking through the dorm's glass windows into the adjacent cellblock, dorm D1.

30. When the Plaintiffs looked into dorm D1, they saw officers using excessive force against unresisting inmates. Spencer saw an officer hit an unresisting inmate in the head with a walkie-talkie. Haines saw two officers ram an unresisting inmate into the wall and saw another officer punching a handcuffed and unresisting inmate in the back.

31. Several inmates in dorm D2 yelled and banged on the window in an effort to stop the use of excessive force against inmates in dorm D1.

32. Shortly thereafter, numerous officers with the prison's Correctional Emergency Response Team ("CERT") and other officers entered dorm D2. As the officers entered the dorm, they shouted "Lock down!" and fired a device that

dispersed pepper-spray. During the “lockdown” process described below, an unknown inmate allegedly assaulted an officer in dorm D2. The assault on the officer provoked retaliatory beatings on the Plaintiffs, as set forth herein.

### **B. First Assault on Cornelius Spencer**

33. Before the officers entered D2, Plaintiff Cornelius Spencer, who had just left the shower and was clad in a towel, underwear, and shower shoes, was attempting to enter his assigned cell. But the cell door was locked. When officers ordered all inmates in the dorm to “lock down,” Spencer called to the officer stationed in the booth to ask that his cell door be opened, but it remained locked.

34. CERT officers, including Officer Porter, then approached Spencer and ordered him into his cell. Spencer stated that his cell door was locked. Officer Porter ordered Spencer to lie down on the ground. As Spencer was lowering himself to the ground in compliance with this order, Officer Porter kicked Spencer in the face and sprayed him directly in the face with pepper-spray. At no time did Spencer resist or take any action to justify this unprovoked assault. Spencer then complied with the officers’ order to “lockdown” in a nearby cell.

### **C. Assault on Gregory Haines**

35. When officers ordered all inmates in dorm D2 to “lockdown” in their cells, Plaintiff Gregory Haines immediately walked toward the staircase leading to

the dorm's top tier where his cell was located. As he did so, Officers Lyons, Wooten, and Souther grabbed Haines by the shirt and slammed him into the wall. These three officers then repeatedly punched Haines in the back, picked him up, slammed him to the ground, and continued to punch and assault him. At no time did Haines resist or take any action to justify this unprovoked assault. After Haines was face down on the floor with his hands secured in handcuffs behind his back, the officers continued to punch Haines at least fifteen more times.

36. Haines was then led in handcuffs to the shower and was shoved inside. He landed on his knees. While Captain Clark and Lieutenant Davis watched, an unknown officer kned Haines in the face while Haines was handcuffed and on his knees. Then, while Captain Clark and Lieutenant Davis watched, the unknown officer elbowed Haines in the face, and punched him three times. At no times did Haines resist or do any act to justify this assault. Although they had the opportunity to do so, neither Captain Clark nor Lieutenant Davis took any action to stop the officer's use of excessive force on Haines. Further, while watching this conduct, Captain Clark stated to Haines: "That's what you get for hanging around with niggers."

37. Next, Haines, still handcuffed, was led out of the shower and into the sally port between the dorm and the exit to the prison yard. He was ordered to

kneel and he did so. An officer then pushed his head toward the floor so that Haines was doubled over with his hands secured behind his back and his face near the ground. A moment passed. Then, for no legitimate reason, Officer McGathy kicked Haines in the face hard, splitting his lip. At no time did Haines resist or do any act to justify this assault.

38. Haines was then led outside of the dorm and told to kneel on the gravel along with other handcuffed inmates. He did so. Without warning, Captain Clark pulled Haines's legs out from under him, causing Haines to fall from a kneeling position into the gravel, face first.

#### **D. Plaintiffs Moved to the Special Management Unit**

39. While officers completed the "lockdown" of dorm D2, the Plaintiffs and other inmates were made to lie face down on the ground outside the dorm, allegedly because they were suspected in an assault on an officer.

40. While Spencer was lying on the ground, Officer Quarles grabbed Spencer's head in both hands and said "Oooh, I'm gonna get you, you little f---." Officer Porter threatened Spencer, saying "you'd better transfer."

41. Next, the inmates were ordered to get up, led toward the infirmary, and ordered to kneel again on the ground outside the infirmary. The men remained handcuffed, some wearing only their underwear. Captain Clark addressed the

inmates, asking them “who hurt my officer?” Captain Clark then ordered the CERT officers present to take the inmates “to the hole” and to “give them something they can send pictures of to their mamas.”

42. The Plaintiffs and other inmates were then led to the SMU and placed, one man each, into separate SMU exercise cages. All were handcuffed. While an inquiry into each inmate’s involvement in the alleged assault on the officer was appropriate, the subsequent retaliatory beatings of the inmates while handcuffed were not constitutionally permitted.

#### **E. Second Assault on Cornelius Spencer**

43. The CERT officers came first for Cornelius Spencer. When they approached, Spencer, fearful that he would be harmed, said “I ain’t did nothing.” Officer Gilreath replied “You ain’t felt nothing yet.”

44. The door to Spencer’s cage was opened. Officers Gilreath, Hamilton, Quarles, and another officer walked Spencer, still handcuffed, barefoot and wearing only torn underwear, into dorm G1 of the SMU. At no time during the subsequent assault did Spencer offer any resistance; nor did he take or fail to take any action that would have necessitated any use of force.

45. As soon as they entered dorm G1, Officer Gilreath struck Spencer with a closed fist in the jaw, hitting him with such force that Spencer fell to the

ground. Then Officer Gilreath kicked Spencer in the face while Spencer was on the ground. Officer Hamilton repeatedly struck Spencer in the legs and feet with a thin baton-like weapon. Spencer screamed for the officers to stop, but they continued to assault him. The CERT officers continued to punch, kick, and stomp their boots on Spencer for several minutes, during which time Spencer offered no resistance. Then Officer Gilreath kicked Spencer in the head and Spencer fell unconscious. He was dragged into the SMU shower area and left there.

#### **F. Assault on Eric Towns**

46. Two officers then emerged from dorm G1 and opened Eric Towns's exercise cage. The officers led Towns toward dorm G1, with one officer holding Towns under each of his shoulders. Towns's hands were cuffed behind his back. At no time during the subsequent assault did Towns offer any resistance; nor did he take or fail to take any action that would have necessitated any use of force.

47. When Towns entered dorm G1, he saw blood on the floor. Several other CERT officers were present. All of a sudden, one of the CERT officers, who was wearing a solid-toed combat boot, dealt Towns a karate-style kick to the head. Towns started to fall to the ground from the force of the blow, but the same CERT officers who escorted Towns into dorm G1 held him up so that other officers could continue to assault him. Another officer then hit Towns in the head with a baton.



The blow rendered Towns unconscious. When he regained consciousness, he heard Miracle Nwakanma screaming.

### **G. Assault on Miracle Nwakanma**

48. After they assaulted Spencer and Towns, the CERT officers emerged from dorm G1 and opened Miracle Nwakanma's exercise cage. They ordered Nwakanma to enter dorm G1, and Nwakanma complied. He was handcuffed and clothed only in shorts and shower shoes. At no time during the subsequent assault did Nwakanma offer any resistance; nor did he take or fail to take any action that would have necessitated any use of force.

49. As soon as Nwakanma entered dorm G1, a CERT officer punched him in the neck. Another CERT officer then struck him in the back of the head with a baton. All of the CERT officers and one regular officer continued to punch Nwakanma and hit him with batons until he fell. Once Nwakanma was on the ground, an officer kicked him hard in the groin. When Nwakanma doubled up in pain, the officer repeatedly kicked him again in the groin and stomach. Another officer repeatedly stomped his boots into Nwakanma's face. Then an officer kicked Nwakanma in the mouth with such force that Nwakanma's teeth splintered, causing tooth fragments to become embedded in his lip.

50. Nwakanma believed that the officers would kill him. As they were beating him, one officer said he would “send a card to [Nwakanma’s] mama” saying “her son ain’t coming home.” Finally, an officer struck Nwakanma with a flashlight on the temple causing Nwakanma to lose consciousness.

#### **H. Injuries Sustained By Cornelius Spencer**

51. After the assault, Spencer woke up in the SMU shower in a pool of his own blood. He was carried on a stretcher to the infirmary. A “Use of Force Assessment” completed by prison medical staff at 18:30 on August 12, 2010 noted that Spencer:

- (a) had a “baseball sized” hematoma to the right side of the head;
- (b) was vomiting a bile-like fluid;
- (c) was “lethargic”, “disoriented to place, time”, and dehydrated;
- (d) had a “possible internal injury,” pain in both arms, and “blood shot eyes”; and
- (e) required an “urgent” referral to the local emergency room.

52. Intravenous fluids were given and an ambulance was summoned. On his way from the SMU to the prison’s infirmary, Spencer’s body began to shake and convulse uncontrollably. Oxygen was administered. Spencer faded in and out of consciousness on the drive to Redmond Regional Medical Center. In the

emergency room, Spencer was treated for a laceration to his face; x-rays were taken; and other tests were performed.

53. The emergency room physician's clinical report listed the doctor's clinical impressions as: (a) "Closed head injury with loss of consciousness"; (b) "Abrasion to the right lower leg and left lower leg"; and (c) Contusion to the head, right upper arm, right lower leg, and left lower leg." X-rays confirmed that Spencer also had a fractured toe.

54. Following the August 12, 2010 incident, Spencer could not walk unaided. He could not walk without pain for at least one week after the incident.

#### **I. Injuries Sustained by Gregory Haines**

55. Defendants' unprovoked and retaliatory assault on Haines caused him to suffer a bleeding and lacerated lip. Following the assault, Haines also had a swollen knot on his head and multiple bruises and abrasions. Boot prints were still visible on Haines's back several days after the incident.

#### **J. Injuries Sustained by Eric Towns**

56. After Towns regained consciousness, he was taken to the prison's infirmary. He had a bleeding laceration on the back of his head, a contusion on his arm, and scratches on his knees. He also had a contusion on his heel and painful, welts on his foot. He was given crutches, without which he could not walk. As a

result of the assault, Towns has experienced headaches, memory loss, and nightmares.

### **K. Injuries Sustained by Nwakanma**

57. When Nwakanma regained consciousness after the assault, he was lying in the shower in a pool of his own blood. He was wet and his underwear was drenched with water.

58. As Nwakanma began to regain consciousness, he heard Warden Dean calling through the locked door, but he could not respond or sit up. Later, he was transported to the infirmary on a cart.

59. A “Use of Force Assessment” conducted by GDC medical personnel following the beating showed that Nwakanma had an open laceration to his bottom lip, an open laceration on his left eyebrow, and a swollen foot. He was “extremely hot, sweating profusely,” and told a nurse that he felt he would pass out again.

60. Nwakanma’s medical record indicates that the laceration to his lip was “too swollen to suture” on the day after the incident. An x-ray performed on August 26, 2010 showed that he had a fractured toe.

61. Following the incident, Nwakanma’s lip remained swollen for over one month and he had pain and discomfort in his jaw. On September 23, 2010, a

dentist's x-ray found broken teeth, a "painful mass" formed by "tooth fragments embedded in the lower lip" and a "possible healing left mandible fracture."

62. On September 27, 2010, Nwakanma had surgery to extract the tooth fragments from his lower lip. Even after surgery, Nwakanma still has a hard lump in his lip with tooth fragments embedded therein.

63. Nwakanma also suffered possible neurological damage from the assault. Since the assault, he has consistently had trouble articulating words. He has also experienced memory loss, poor concentration, persistent fatigue, and a tendency to fall asleep at inappropriate times, as a result of the incident.

COUNT I:

Violation of Eighth and Fourteenth Amendments  
to the United States Constitution and 42 U.S.C. § 1983

By Defendant Officers Gilreath, Hamilton, Lyons, McNabb, McGathy, Porter,  
Quarles, Souther, Stewart, and Wooten (Defendant Officers)

64. Plaintiffs incorporate herein and re-allege, as if fully set forth herein, all factual allegations set forth in ¶¶ 1-8 and 28-63.

65. Defendant officers Gilreath, Hamilton, Lyons, McNabb, McGathy, Porter, Quarles, Souther, Stewart, and Wooten (collectively, the "Defendant Officers"), acting under the color of state law, violated Plaintiffs' rights under the Eighth and Fourteenth Amendments to the United States Constitution by using force "maliciously and sadistically to cause harm." *Hudson v. McMillian*, 503 U.S.

1, 7 (1992). The force used by the Defendant Officers, while Plaintiffs were unresisting and restrained with their hands secured behind their backs, was excessive and beyond any force reasonably necessary to maintain order.

66. The Defendant Officers acted with a malicious and retaliatory purpose to inflict harm and more than a de minimis force was applied. *See Wilkins v. Gaddy*, 130 S. Ct. 1175, 1178 (2010).

67. As a direct and proximate result of the Defendant Officers' actions, Plaintiffs suffered substantial physical and emotional injuries and have suffered damages in an amount to be proven at trial.

68. The Defendant Officers' above-described actions were willful, deliberate, and in reckless disregard of the constitutional rights of Plaintiffs, and should be punished and deterred by an award of punitive damages in an amount to be determined at trial. Punitive damages are necessary to deter future Eighth Amendment excessive force violations by these Defendants and at this institution.

COUNT II:

Violation of Eighth and Fourteenth Amendments  
to the United States Constitution and 42 U.S.C. § 1983  
By Defendants Clark and Davis (Defendant Supervisors)

69. Plaintiffs incorporate herein and re-allege, as if fully set forth herein, all factual allegations set forth in ¶¶ 1-8 and 28-63.

70. Defendants Captain Clark and Lieutenant Davis (together, the “Defendant Supervisors”) knew that officers at Hays State Prison have long engaged in a pattern and practice of using excessive and retaliatory force against inmates. The past history of widespread abuse against inmates at Hays State Prison was obvious, flagrant, rampant, and of continued duration. Defendants Captain Clark and Lieutenant Davis were on notice of the pattern of excessive force at Hays State Prison, but did not act reasonably to curb it. Defendants Captain Clark and Lieutenant Davis knew of a significant risk that Plaintiffs would be subject to excessive force, but failed to respond reasonably to this risk.

71. Defendants Captain Clark and Lieutenant Davis were further present for and witnessed the unconstitutional assaults in D2 dorm, yet they failed to take reasonable steps to protect the Plaintiffs from other officers’ use of excessive force. Defendants Captain Clark and Lieutenant Davis did nothing to discourage the conduct described herein, even though they had a realistic opportunity to prevent or stop the beatings; instead, they directed, incited, and explicitly encouraged officers to use excessive force against Plaintiffs.

72. By allowing the Defendant Officers to restrain Plaintiffs with handcuffs and exact revenge through severe and sustained beatings in the SMU, Defendants Captain Clark and Lieutenant Davis, acting under the color of state

law, were deliberately indifferent to the resulting substantial risk of physical and emotional injury to Plaintiffs. This deliberate indifference directly and proximately caused the violation of Plaintiffs' right to be free from cruel and unusual punishment, as provided by the Eighth Amendment and applied to the states by the Fourteenth Amendment to the United States Constitution.

73. As a direct and proximate result of the Defendant Supervisors' acts and omissions, Plaintiffs have suffered substantial physical and emotional injuries and have suffered damages in an amount to be proven at trial.

74. The Defendant Supervisors have tolerated and ratified a policy and practice of unconstitutional assaults against inmates at Hays State Prison, despite their knowledge of the repeated and violent nature of those assaults. Plaintiffs remain incarcerated in the state prison system and thus cannot avoid future exposure to the pattern of excessive and retaliatory force at Hays State prison. Absent an injunction, Plaintiffs are subject to a real and immediate threat of future unconstitutional and retaliatory assaults.

75. The Defendant Supervisors' above-described actions were willful, deliberate, and in reckless disregard of the constitutional rights of Plaintiffs, and should be punished and deterred by an award of punitive damages in an amount to



be determined at trial. Punitive damages are necessary to deter future Eighth Amendment excessive force violations by these Defendants and at this institution.

**VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray that this Court:

- (a) Assume jurisdiction over this action;
- (b) Declare that the acts and omissions described herein violated Plaintiffs' rights under the Constitution and laws of the United States;
- (c) Order Defendants to comply with the Constitution and enjoin Defendants from subjecting Plaintiffs to cruel and unusual punishment;
- (d) Enter judgment in favor of Plaintiffs for compensatory (or, in the alternative, nominal) and punitive damages, as allowed by law, against each Defendant, jointly and severally;
- (e) Award Plaintiffs the costs of this lawsuit and reasonable attorneys' and expert fees and expenses pursuant to 42 U.S.C. § 1988(b) & (c) and as otherwise allowed by law;
- (f) Order such additional relief as this Court may deem just and proper.

[SIGNATURES ON FOLLOWING PAGE]

Respectfully submitted this 12th day of July, 2011.

s/ Lawrence J. Bracken II  
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***Counsel for the Plaintiffs***

**LOCAL RULE 7.1(D) CERTIFICATION**

In accordance with LR 7.1(D), NDGa, the undersigned counsel hereby certifies that this computer document was prepared in Times New Roman 14-point font, which is approved by the Court in Local Rule 5.1(B).

This 12th day of July, 2011

*s/ Lawrence J. Bracken II*  
\_\_\_\_\_  
Lawrence J. Bracken II