their Eighth Amendment right to be free from cruel and unusual punishment. As relief, Plaintiffs request that Defendants be ordered to "eliminate the substantial risks of serious harm" that have allegedly resulted from, *inter alia,* inadequate medical and mental health care, unsanitary environmental conditions, the use of excessive force by EMCF personnel, and the use of isolated confinement.

The factual allegations in the Complaint are divided into several categories, the first of which is labeled "Solitary Confinement". As regards this category, Plaintiffs allege that although prisoners who are placed in solitary confinement should be permitted one hour of out-of-cell time per day to shower or have yard time, they often go days, and sometimes weeks, without being permitted any out-of-cell time. See

prisoner-to-prisoner violence. Id. at ¶¶ 36-37. Plaintiffs complain that placement in solitary confinement exacerbates the symptoms of pre-existing mental illnesses and can cause suicidal thoughts, thoughts upon which a few prisoners have acted. Id. at ¶¶ 38-74.

The second category in the Complaint is labeled "Mental Health Care". As regards this category, Plaintiffs allege: (1) they receive little, if any, individual or group mental health treatment, (2) they are over-medicated with tranquilizing anti-psychotic medications, (3) the symptoms of their mental diseases are exacerbated by the conditions under which they are housed, and (4) they are subjected to disciplinary actions if they attempt to seek help from the medical staff. Id. at ¶¶ 79-82. Plaintiffs further allege: (1) they have de minis contact with psychiatrists, (2) they are given little to no opportunity to discuss their symptoms or problems with mental at refBT12 0 0 12 354 405.212 .0222 T8Th

before being seen by a healthcare provider, and (3) prisoners are often treated by nurses regardless of the nature or seriousness of their medical problems. Id. at ¶¶ 113-20. Plaintiffs further allege that they do not always receive their prescribed medications, and that there is insufficient documentation to determine whether their medications are being given or taken as prescribed. Id. at ¶¶ 121-23. Finally, Plaintiffs allege that (1) they are denied treatment for acute or chronic pain and other medical conditions including diabetes and hypertension; (2) they receive untimely and insufficient dental and other medical care; (3) they are required to wait extended periods of time to see specialists, for example ophthalmologists; and (4) recommended treatment plans and corrective surgeries are often denied by prisoner officials. Id. at ¶¶ 124-89.

The fourth category in the Complaint is labeled "Abuse and Excessive Force by Staff". As to this category, Plaintiffs allege that security officers at EMCF often "use excessive force with impunity and with no oversight." Id. at ¶ 190. Plaintiffs further allege that EMCF security officers and staff (1) receive insufficient training; (2) frequently use chemical agents and physical force without warning and in the absence of immediate threat of danger or resistence from the prisoners; and (3) deny requests for medical care by prisoners who have been subjected to physical force or chemical agents. Id. at ¶¶ 191-202. According

to Plaintiffs, EMCF personnel use chemical agents and force against prisoners regardless of their pre-existing medical or psychiatric problems. Id. at ¶¶ 203-08.

The fifth category in the Complaint is labeled "Failure to Protect Prisoners From Violence". As to this category, Plaintiffs allege that EMCF fails to protect prisoners from extortion, bodily and sexual assaults, and other threats of violence from other inmates. Id.

cleaned. Id. at ¶¶ 234-43. As to the seventh category in the Complaint, which is labeled "Nutrition and Food Safety", Plaintiffs allege that they are "being deliberately underfed and malnourished." Nearly sixty percent of reviewed medical records purportedly indicate significant weight loss in patients after their arrival at EMCF. Id. at ¶¶ 244-50.

Next, in their Complaint, Plaintiffs allege that Mississippi prison officials have been indifferent to the problems that exist in

Based on these allegations, Plaintiffs filed a Complaint in this Court seeking relief under 42 U.S.C. § 1983 against the Commissioner, the Chief Medical Officer, and the Deputy Commissioner for Institutions of the Mississippi Department of Corrections ("MDOC"). In their Complaint, Plaintiffs first request that they be permitted to proceed as a "class of all persons who are currently, or will be confined at the EMCF." Id. at ¶ 284. The proposed class of all current and future EMCF prisoners is referred to as the "EMCF Class". Id. Plaintiffs also seek to proceed under the following three subclasses: the Isolation Subclass, the Mental Health Subclass, and the Units 5 and 6 Subclass.[1] Id. at ¶¶ 293-312. As to the EMCF Class and identified subclasses, Plaintiffs request relief under Section 1983 on claims that their constitutional rights, as protected by the Eighth and Fourteenth Amendments, have been violated as follows:

> Claim One – The policies and practices at EMCF subject members of the EMCF Class to a substantial risk of serious harm and injury from inadequate medical care, including dental care, optical care, and other health-related services.
>
> Claim Two - The policies and practices at EMCF subject members of the Mental Health Subclass to a substantial

[1] Unit 5 houses inmates in long-term segregation, and Unit 6 houses inmates in short-term segregation.

risk of serious harm and injury from inadequate mental health care.

Claim Three - The policies and practices at EMCF subject members of the Isolation Subclass to a substantial risk of serious harm and injury from housing them in conditions that amount to solitary confinement, including risks of harm from inadequate physical exercise, filthy and unsafe environmental conditions, inadequate nutrition, inadequate mental health treatment, and conditions of extreme social isolation and sensory deprivation.

Claim Four - The policies and practices at EMCF subject members of the EMCF Class to a substantial risk of serious harm and injury from the infliction of excessive force.

Claim Five - The policies and practices at EMCF subject members of the EMCF Class to a substantial risk of serious harm and injury by failing to protect them from violence, ignoring emergency situations, and enabling violent attacks on prisoners.

Claim Six - The policies and practices at EMCF subject members of the Units 5 and 6 Subclass to a substantial risk of serious harm and injury from dangerous environmental conditions, including vermin, exposure to smoke and other toxic substances, filthy cells and fixtures, broken plumbing, inoperable lighting, constant illumination, and inadequate ventilation.

Claim Seven - The policies and practices at EMCF subject members of the EMCF Class to a substantial risk of serious harm and injury by providing inadequate nourishment to maintain health, and by serving food in an unsanitary and unsafe manner.

Through these claims, Plaintiffs seek a declaration that the current policies and practices at EMCF have violated their constitutional rights as protected under the Eighth Amendment. Plaintiffs also request that the named prison officials be enjoined from continued use of the policies and practices now being implemented at EMCF, and that they be required to implement a plan to eliminate the substantial risks of harm that result from (1) inadequate medical and mental health care, (2) unsanitary and dangerous environmental conditions, (2) the use of excessive force by EMCF staff, (4) prisoner-on-prisoner violence, (5) malnutrition

and unsanitary food preparation and delivery, and (6) the use of isolated confinement. At a minimum, Plaintiffs request that the court-ordered plan: (1) prohibit solitary confinement under conditions of social isolation and sensory depravation; (2) provide timely and adequate treatment for both mental and physical illness; (3) protect prisoners from excessive force at the hands of EMCF staff and from harm from other prisoners; (4) require that prisoners be housed in safe, clean, and sanitary conditions; (5) provide prisoners nutritionally adequate, and safely prepared and served meals; and (6) require that prison officials monitor the performance of all private prison contractors. Finally, Plaintiffs request costs and attorneys' fees under 42 U.S.C. § 1988.

Plaintiffs have now moved for certification of the general class and subclasses identified in the Complaint. In response, Defendants have moved to exclude Plaintiffs' medical and mental health expert witnesses. As the Motions have now been fully briefed, they will be decided by the Court.

II. Analysis

A. Motion to Exclude Plaintiffs' Medical and Health Expert Witnesses

Defendants have moved, under Daubert and its progeny, to exclude the expert reports and testimony of Plaintiffs' medical and mental health experts Dr. Terry A. Kupers ("Kupers"), Dr. Marc Stern ("Stern"), Dr. Bart Abplanalp ("Abplanalp"), and Nurse

Practitioner Madeleine LaMarre ("LaMarre"). The admissibility of expert testimony is governed by Rule 702 of the Federal Rules of Evidence, which provides:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Before permitting an expert to testify, the trial court "must perform a screening function to ensure that the expert's opinion is reliable and relevant to the facts at issue in the case." Watkins v. Telsmith, Inc., 121 F.3d 984, 988-89 (5th Cir. 1997)(citing Daubert v. Merrill Dow Pharms., Inc., 509 U.S. 579, 589 (1993)). Whether an expert's opinion is reliable is determined by assessing "whether the reasoning or methodology underlying the testimony is scientifically valid." Daubert, 509 U.S. at 592–93. To be admissible, the "expert's testimony must be reliable at each and every step", in other words, "[t]he reliability analysis applies to all aspects of an expert's testimony: the methodology, the facts underlying the expert's opinion, the link between the facts and the

In moving to exclude Plaintiffs' experts, Defendants first challenge the methodologies they applied in formulating their opinions. See e.g. Mem. in Supp. of Mot. to Exclude [Docket No. 224], 2 (arguing that Plaintiffs' experts "could have and should have used established, recognized and universally accepted principles and methods of statistical sampling and analysis to evaluate and forecast the inmate population's medical and mental health care need."). Specifically, Defendants contend that the experts' opinions, which are based on "judgment sampling"[2] and "qualitative studies" of a few "unrepresentative samples" of medical records and prisoner interviews, are invalid because such samplings and studies cannot be used to derive inferences as to the EMCF prisoner population at large. See [Docket No. 237] (Nicholson Aff.) at ¶ 32 (Defendants' statistics expert opining that "the inferences the experts made from the sample of medical records and prisoner interviews to all medical records and all prisoners are invalid."). See also id. at ¶ 30 (arguing that for "their respective samples", Plaintiffs' experts "passed around the records of the sick whom they subjectively believed the system failed and then concluded that the system fails all of the sick.").

In response, Plaintiffs argue that the qualitative research methods used by their experts are both "accepted and mainstream in

[2] A "judgment sample" is explained as a sample that is "chosen based on the expertise and judgment of a subject matter expert with knowledge of the system or process being assessed." See Resp. to Mot. to Exclude [Docket No. 229], 4-5.

the scientific community" and are "more applicable to a proper evaluation of the delivery of health care at a prison." Pls.' Resp. to Mot. to Exclude [Docket No. 229], 4. As explained by Plaintiffs' expert Stern:

> When sampling from people (patients, staff) and documents in qualitative research, random samples are to be avoided. Instead, the gold standard for sampling is "judgment sampling" or "purposeful sampling". Instead of using random number generators to select samples, a judgment sample is chosen based on the expertise and judgment of a subject matter expert with knowledge of the system or process being assessed. The goal is to obtain a sample which is as broad, rich, and representative of the diversity of operational conditions as possible. Such a process for collection of data usually requires appropriate expertise in the relevant disciple: "At the same time, the choice of which data to examine, or how best to model a particular process, could require subject matter expertise that a statistician lacks." Judgment samples are appropriate because ensuring that all potential observational units in a population and sampling time frame have equal probability of selection is often not the most desired or beneficial strategy. Rather, we look to the subject matter experts to guide which areas, times of day, or segments of the population are most important to study and understand.

See Pls.' Resp. to Mot. to Exclude, Ex. 2 (Stern Decl.), ¶ 31. (alterations in original)(citations to treatises and journals omitted).

Having reviewed the pleadings, the Court finds there is a stark disagreement as to whether qualitative methodologies (as urged by Defendants) or quantitative methodologies (as urged by Plaintiffs) are the more proper standard to be applied in this case. Although Defendants have shown that the qualitative methodologies used by Plaintiffs' experts raise questions regarding

bias, and whether it is scientifically permissible to make inferences as to the whole EMCF prisoner population based on a selective sampling of the medical records of only a few inmates, the Court finds these issues go more to the credibility of the expert opinions as opposed to undermining the methodologies used by Plaintiffs' experts in formulating those opinions. See e.g. Daubert, 509 U.S. at 596 (explaining that "[v]igorous cross-examination [and] presentation of contrary evidence," are the "appropriate means of attacking" disputed evidence relied upon by experts, and that "in the event the trial court concludes that the scintilla of evidence presented supporting a position is insufficient to allow a reasonable juror to conclude that the position more likely than not is true, the court remains free to direct a judgment ... and likewise to grant summary judgment." See also Pipitone v. Biomatrix, Inc., 288 F.3d 239, 250 (5th Cir. 2002)("The fact finder is entitled to hear [the expert's] testimony and decide whether it should accept or reject the testimony after considering all factors that weigh on credibility, including whether the predicate facts on which [the expert] relied are accurate."); Nova Consulting Grp., Inc. v. Eng'g Consulting Srvs., Ltd., 290 F. App'x 727, 733 (5th Cir. 2008)(relying on Daubert, and noting that it is not the role of the trial court to evaluate whether the facts underlying the expert's opinion are correct); Viterbo v. Dow Chem. Co., 826 F.2d 420, 422 (5th Cir. 1987)("As a

circumstances of each inmate.”). The Court finds that Defendants’ objection as to whether LaMarre and/or Abplanalp should be permitted to offer an ultimate opinion is one that should be raised, and considered, at trial.

After considering the pleadings, the Court finds Defendants have failed to show that the methodologies used by Plaintiffs’ expert witnesses in formulating their opinions requires that their opinions be excluded under Daubert. Defendants’ Motion to Exclude Plaintiffs’ Medical and Mental Health Expert Witnesses will, therefore, be denied.

B. Plaintiffs’ Motion for Class Certification

1. Standards

Plaintiffs have moved for class action certification under Rule 23(b)(2) of the Federal Rules of Civil Procedure. It is well settled that the district court must conduct a “rigorous analysis” of all of the requirements for certification under Rule 23, see Castano v. American Tobacco Co., 84 F.3d 734, 740 (5th Cir. 1996)(citing General Tel. Co. of Southwest v. Falcon, 457 U.S. 147 (1982)), and that Plaintiffs bear the burden of proving that those requirements are satisfied. See e.g.

FED. R. CIV. P. 23(a). As Plaintiffs have moved for certification under Rule 23(b)(2), they also bear the burden of showing:

> (b) Types of Class Actions. A class action may be maintained if Rule 23(a) is satisfied and if:
>
> ...
>
> (2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

FED. R. CIV. P. 23(b)(2).

The Rule 23(a) requirements were as discussed in length in M.D. v. Perry, 294 F.R.D. 7 (S.D. Tex. 2013). That discussion is reprinted here in abridged form.

Rule 23(a) Requirements

Numerosity

> Rule 23(a)(1) "requires examination of the specific facts of each case and imposes no absolute limitations." General Tel. Co. of the NW., Inc. v. EEOC, 446 U.S. 318, a) re48 -8solutmagic numbr

Commonality

Commonality was the main issue in the Supreme Court's Wal–Mart decision, 131 S.Ct. at 2550 ("The crux of this case is commonality"), and is the most complex part of Rule 23(a) analysis. "Commonality requires the plai

the need will result in constitutional violations." Id. (internal quotation marks omitted)(citing Baker v. District of Columbia, 326 F.3d 1302, 1306 (D.C. Cir. 2003)). While using the same phrasing as the substantive due process deliberate indifference standard, the requirements for demonstrating the existence of a policy are less demanding. "The inquiry is an objective one ... Mere negligence does suffice: the doctrine does not require the [official actor, in this case a city] to take reasonable care to discover and prevent constitutional violations, but simply means that, faced with actual or constructive knowledge that its agents will probably violate constitutional rights, the [official actor] may not adopt a policy of inaction." Id. (emphasis in original) (internal quotation marks removed)(citing Warren v. District of Columbia, 353 F.3d 36, 39 (D.C. Cir. 2004)).

A plaintiff also bears the burden of connecting the policy or practice to the alleged harm, especially in cases where this connection is not readily apparent. Cf. Ross v. RBS Citizens, N.A., 667 F.3d 900 (7th Cir. 2012) cert. granted, judgment vacated, --- U.S. ---, 133 S.Ct. 1722 (2013)(certifying a class based on being denied overtime compensation due to unofficial company policies); In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig., 678 F.3d 409, 414 (6th Cir. 2012) cert. granted, judgment vacated sub nom. Whirlpool Corp. v. Glazer, --- U.S. ---, 133 S.Ct. 1722 (2013) aff'd 722 F.3d 838 (6th Cir. 2013)(certifying a class based on the purchase of washers with design defects); Gray v. Hearst Commc'ns, Inc., 444 F. App'x 698 (4th Cir.

2011)(certifying a class based on breach of a sufficiently similar contract). In doing so, "the party seeking class certification may rely on reasonable, common-sense assumptions and inferences to satisfy the requirements for class certification." Kase v. Salomon Smith Barney, Inc., 218 F.R.D. 149, 152 (S.D. Tex. 2003)(citing Zeidman, 651 F.2d at 1039).

McReynolds v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 672 F.3d 482 (7th Cir. 2012) cert. denied, ––– U.S. ––––, 133 S.Ct. 338 (2012), involved a somewhat

It is important to note, as the Seventh Circuit did, that class certification does not require the plaintiffs to establish that the harm actually occurred, i.e., they do not need to prove that the policies they identified did, in fact, cause the harm they are alleging. Consistent with Amgen and EPJ Fund, the only consideration at the class certification stage is whether the issues are appropriate for classwide litigation. That is, whether the plaintiffs have satisfied Rule 23's requirements.

> If the teaming policy causes racial discrimination and is not justified by business necessity, then it violates Title VII as 'disparate impact' employment discrimination — and whether it causes racial discrimination and whether it nonetheless is justified by business necessity are issues common to the entire class and therefore appropriate for class-wide determination.
>
> ...
>
> We are not suggesting that there is in fact racial discrimination at any level within Merrill Lynch, or that management's teaming and account distribution policies have a racial effect. The fact that black brokers have on average lower earnings than white brokers may have different causes altogether.

Id. at 489–90 (emphasis added).

As the court indicated, failure to act can also constitute a policy or practice. Young v. Nationwide Mutual Insurance, Co. affirmed the certification of a class based on the defendants' miscalculations of local taxes that they were authorized to collect. Young, 693 F.3d, 532, 535 (6th Cir. 2012). Despite the defendants' contentions that they had no uniform policy or practice

that resulted in these errors — asserting instead that each was the product of unique circumstances like misspelling a name — the Sixth Circuit concluded that there was a common policy since defendants opted not to use available geocoding verification procedures that would have, plaintiffs alleged, avoided the errors. Id. at 542–43. The Young plaintiffs were, therefore, able to point to a discrete policy or practice of the defendants — not using these procedures — and the availability of something like geocoding technology served to highlight the defendants' choice. Cf. Wal–Mart, 131 S.Ct. at 2555–56 ("respondents have identified no 'specific employment practice' — much less one that ties all their 1.5 million claims together."); In re Countrywide Fin. Corp. Mortg. Lending Practices Litig., 708 F.3d 704, 708 (6th Cir. 2013).

The common practice or policy does not have to injure every class member or injure them in exactly the same manner: "Class certification is appropriate 'if class members complain of a pattern or practice that is generally applicable to the class as a whole. Even if some class members have not been injured by the

("If, as appears to be the case, the defect in a Kenmore-brand washing machine can precipitate a mold problem at any time, the defect is an expected harm, just as having symptomless high blood pressures creates harm in the form of an abnormally high risk of stroke.")(emphasis added); Daffin v. Ford Motor Co., 458 F.3d 549 (6th Cir. 2006).

In addition, a plaintiff must demonstrate that there are common questions of fact or law. Not any questions will do, however. The plaintiff must show that the class' claims are based on a common contention that is "capable of classwide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each of one of the claims in one stroke." Wal–Mart, 131 S.Ct. at 2551; see also Ealy v. Pinkerton Gov't Servs., Inc., 514 F. App'x 299, 303–04 (4th Cir. 2013). In short, the common questions identified must be dispositive of the claims. If they are not – if, for instance, after the common App422.ot erey astancuS8 TDey a2-j0 -1.nceTw(issue nquiriebe thminat

MD decision. MD, 675 F.3d at 837, 841. Similarly, the Fifth Circuit held that the potential defenses against the plaintiff's claims should also be considered as they may undermine the dispositive, "one stroke" nature of the proposed common questions. Id. at 843–44; see also Witt v. Chesapeake Exploration, L.L.C., 276 F.R.D. 458, 468–69 (E.D. Tex. 2011); cf. Schumacher v. AK Steel Corp. Ret. Accumulation Pension Plan, 711 F.3d 675, 683–84 (6th Cir. 2013). In order to determine whether there are common questions of law or fact, a court must trace the class claims and conclude that the common questions will resolve them without the need for additional extensive individualized inquiry.

The existence of some variations within the class or individualized defenses do not necessarily make class certification improper. "It is not necessary that members of the proposed class 'share every fact in common.'" Evon v. Law Offices of Sidne1 nepicke

things: that there exists a common policy or practice, possibly an implicit one, that is the alleged source of the harm to class members, and that there are common questions of law or fact that will be dispositive of the

Commonality requires showing that, in fact, all members of the proposed class share a common claim, the validity of which can be determined on a classwide basis. Typicality requires showing that, in fact, the proposed representatives have that claim. Often, once commonality is shown typicality will follow as a matter of course. See, e.g., Frey v. First Nat'l Bank Sw., 2013 U.S. Dist. LEXIS 37153 (N.D. Tex. Feb. 20, 2013).

Adequacy of Representation

Like typicality, adequacy of representation also tends to merge with commonality, though it "also raises concerns about the competency of class counsel and conflicts of interest." Wal–Mart, 131 S.Ct. at 2551 n.5 (quoting Falcon, 457 U.S. at 157–58 n.13). Adequacy of representation "'encompasses class representatives, their counsel, and the relationship between the two.'" Stirman v. Exxon Corp., 280 F.3d 554, 563 (5th Cir. 2002)(quoting Berger v. Compaq Computer Corp., 257 F.3d 475, 479 (5th Cir. 2001)). In evaluating this requirement, a court "must consider '[1] the zeal and competence of the representatives' counsel and ... [2] the willingness and ability of the representatives to take an active role in and control the litigation and to protect the interests of absentees.'" Id. (alterations in original)(quoting Berger, 257 F.3d at 479). Class counsel are fiduciaries of the class and the court must be satisfied that they are prosecuting the case in the interest of the class. See e.g., Culver v. City of Milwaukee, 277 F.3d 908, 913 (7th Cir. 2002).

B. Rule 23(b)(2) Requirements

In the Fifth Circuit, Rule 23(b)(2) has been interpreted to have three components. First, "class members must have been harmed in essentially the same way." Maldonado, 493 F.3d at 524 (citing Bolin v. Sears, Roebuck & Co., 231 F.3d 970, 975 (5th Cir. 2000)); see also MD, 675 F.3d at 845 (citing Maldonado). This understanding of the Rule is reinforced by Wal–Mart:

> Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class. It does not authorize class certification when each individual class member would be entitled to a different injunction or declaratory judgment against the defendant ... the relief sought must perforce affect the entire class at once.

131 S.Ct. at 2557–58. Given the threshold requirement of commonality, if a plaintiff has satisfied the requirements of Rule 23(a), then the conditions of Rule 23(b)(2) will tend to follow. In establishing commonality the plaintiff will have identified a common practice or policy that is the source of the class members' harm. So, if she prevails on the merits, a single injunction barring or modifying that course of that behavior will, in the ordinary course of things, provide relief to the members of the class. In contrast, if the requested relief requires particular relief tailored to each class member, then certification under Rule 23(b)(2) is inappropriate. MD, 675 F.3d at 846–47; Shook v. Bd. of Cnty. Comm'rs, 543 F.3d 597, 604 (10th Cir. 2008).

Second, "injunctive relief must predominate over monetary damage claims." Maldonado, 493 F.3d at 524 (citing Bolin, 231 F.3d at 975); accord Wal–Mart, 131 S.Ct. at 2558–59. Damages can be awarded under Rule

> allegations are such that injunctive and declaratory relief are appropriate and that the class is sufficiently cohesive that an injunction can be crafted that meets the specificity requirements of Rule 65(d).") (emphasis added).

2. Discussion

a. Proposed Class and Subclasses

Plaintiffs seek certification of one general class and three subclasses, which are defined as follows:

1. The "EMCF Class", which is defined as a "class of all persons who are currently, or will be, confined at the [EMCF]."

2. The "Isolation Subclass", which is defined as a "class of all persons who are currently, or will be, subjected to Defendants' policies and practices of confining prisoners in conditions amounting to solitary confinement at the [EMCF]."

3. The "Mental Health Subclass", which is defined as a "subclass of all persons who are currently, or will be, subjected to Defendants' mental health care policies and practices at the [EMCF]."

4. The "Units 5 and 6 Subclass", which is identified as a "class of all persons who are currently, or will be, housed in Units 5 and 6 at the [EMCF]."

Reviewing the class and subclass definitions, the Court finds there is overlap as any member of one or more of the subclasses would, necessarily, also be a member of the general EMCF Class.

The Court additionally finds that the class and subclass definitions are unambiguous, and that membership in the class and subclasses could easily be ascertained.

b. Class Claims

All of the claims alleged by Plaintiffs are based on the same legal theories. Specifically, Plaintiffs assert that the policies and practices implemented by Defendants at EMCF have subjected them to a "substantial risk of serious harm and injury" and have violated their Eighth Amendment right to be free from cruel and unusual punishment as well as their Fourteenth Amendment rights. The claims alleged by the EMCF Class include: Claim One - The policies and practices at EMCF subject them to a substantial risk of serious harm and injury from inadequate medical care, including dental care, optical care, and other health-related services; Claim Four - The policies and practices at EMCF subject them to a substantial risk of serious harm and injury from the infliction of excessive force; Claim Five - The policies and practices at EMCF subject them to a substantial risk of serious harm and injury by failing to protect them from violence, ignoring emergency situations, and enabling violent attacks on prisoners; and Claim Seven - The policies and practices at EMCF subject them to a substantial risk of serious harm and injury by providing inadequate nourishment to maintain health, and serving food in an unsanitary

explained by the Court in Estelle:

> An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met. In the worst cases, such a failure may actually produce physical torture or a lingering death, ... [i]n less serious cases, denial of medical care may result in pain and suffering which no one suggests would serve any penological purpose.... We therefore conclude that deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain proscribed by the Eighth Amendment. This is true whether the indifference is manifested by prison doctors in their response to the prisoner's needs, or by prison guards in intentionally denying or delaying access to medical care, or intentionally interfering with the treatment once prescribed. Regardless of how evidenced, deliberate indifference to a prisoner's serious illness or injury states a cause of action under § 1983.

Estelle, 429 U.S. at 103-05. Likewise, the Eighth Amendment requires that prison officials "provide humane conditions of confinement; they must ensure that inmates receive adequate food, clothing, shelter, and medical care, and must take reasonable measure to ensure the safety of the inmates." Gates v. Cook, 376 F.3d 323, 332 (5th Cir. 2004)(citing Farmer v. Brennan, 511 U.S. 825, 832 (1994). Thus, courts have found that prison conditions including inadequate lighting, non-functional plumbing, the presence of vermin, inadequate ventilation, the presence of fire

must establish that there is a policy or practice on the part of the defendants that is the source of the putative class members's alleged injuries, and also that the claims arising out of those injuries depends on common questions of law and fact. Again, a policy or practice for the purposes of establishing commonality need not be officially adopted. Instead, such policy can be established through custom or through failing to act in the face of actual or constructive knowledge that there is likely to be a violation of constitutional rights.

Here, the Court finds there is sufficient evidence that Defendants have failed to act in the face of actual or constructive knowledge that prisoners housed at CMCF were being denied humane conditions of confinement, including adequate food, shelter, medical and mental health care, and safety. For example, TjT*-.1 4(u.12 TD.4 Twnd fact.)imonyna

safety and cell checks as required under EMCF operating policies, and (5) staff is not properly trained as to the manner in which to respond to inmates who are resisting staff direction and, therefore, abuse other control tactics including the use of pepper spray. See Mot. for Class Cert, Ex. 6 (Vail Report), at 7, 16, 19, 32, 33-37, 41-43. Plaintiffs also submit the deposition of Matthew Naidow, who is the captain of security at EMCF, and who testified, *inter alia*, that prisoner-on-prisoner violence is common place, that security officers are poorly trained, and that staff has aided inmate violence by opening cell doors and by failing to intervene when prisoners are being assaulted. Id., Ex. 7 (Naidow Dep.), 29-32, 92-93, 100-01, 104, 173-75, 220-32.

observational care; that medical treatment is provided by health care personnel who lack the requite training and/or are working outside the limits of their licenses; and that the medical examinations and treatment they are provided is inadequate. Id. Ex. 30 (LaMarre Rep.), 6-7, 13, 25-26. Other evidence shows that medical treatment is often delayed or denied; that prisoners are not given all of their prescribed medications; and that the record keeping and oversight of medical care providers is deficient. Id. Ex. 5 (Stern Rep.) 2-3, 11-13, 30; (LaMarre Rep.), 6-7, 13, 25-26.

To prevail on the merits of their class action claims, Plaintiffs will have to prove a causal connection exists between the alleged systematic failure on the part of prison officials to act in the face of actual or constructive knowledge regarding the conditions existing at EMCF, and the unconstitutional risk of harm about which they complain. Thus, the Court finds that all of Plaintiffs' claims will have, at their core, common issues regarding (1) the physical conditions under which prisoners at EMCF are being housed and the type and quality of health and mental health care they are receiving or to which they have access, and (2) whether those conditions and health care have either subjected prisoners to an unconstitutionally unreasonable risk of harm or, conversly, were sufficient to provide humane conditions of confinement. If it is shown, for example, that the physical conditions and health care as provided are sufficient to maintain

humane conditions of confinement, all of Plaintiffs' claims will resolved at once.

In sum, the Court finds that Plaintiffs have satisfied the Rule 23(a)(2) commonality requirement with respect to their class action and subclass action claims. With respect to the EMCF Class and the proposed subclasses, Plaintiffs have alleged that their Eighth Amendment Rights have been violated, they have identified a common policy or practice on the part of the prison officials - namely that the officials have failed to take any action in the face of actual or constructive knowledge regarding the allegedly unconstitutional conditions existing at EMCF, and there are common questions of law or fact that will resolve all of their claims.

iii. Typicality

To establish typicality under Rule 23(a)(3), Plaintiffs must show that the claims of the representative parties are typical of the claims of the class. Here, the prison officials' alleged failure to take any action in the face of actual or constructive knowledge regarding the allegedly unconstitutional conditions existing at EMCF affect all prisoners housed at that facility. As discussed above, typicality under Rule 23(a)(3) does not require that each class member's claim be identical, but only that the claims have the same essential characteristics of those of the putative class. As the claims of each putative class and subclass

member (1) arise from the same policy or practice, i.e. the prison officials' alleged failure to take corrective action, and the same defect, i.e. the existence of inhumane conditions of confinement, and (2) are based on the same legal theory, i.e. the alleged violation of the Eighth Amendment right to be free from cruel and unusual punishment, the Court finds that Plaintiffs have satisfied the Rule 23(a)(3) typicality commonality requirement with respect to the general EMCF Class and each of the subclass.

iv. Adequacy of Representation

To satisfy Rule 23(a)(4), Plaintiffs must show that the representative parties will fairly and adequately protect the interests of the class. As discussed above, when evaluating this requirement, courts consider "the zeal and competence" of the representatives' counsel, and the willingness and ability of the representatives to take an active role in and control the litigation and to protect the interests of class members. Here, based on the volume and thoroughness of the pleadings, the Court finds Plaintiffs' counsel have shown themselves to be both zealous and competent. Second, although Defendants argue that the medical records do not support the claims alleged by the putative class and subclass representatives, the Court finds no evidence that the proposed representatives are unwilling or unable to participate in the litigation and seek to protect the interests of class members.

Accordingly, the Court finds that Plaintiffs have satisfied the Rule 23(a)(4) adequacy of representation requirement with respect to their class action and subclass action claims.

v. Rule 23(b)(2)

As discussed above, Rule 23(b)(2) has been interpreted to have three components. First, "class members must have been harmed in essentially the same way." Maldonado, 493 F.3d at 524. The Court finds this component is satisfied because Plaintiffs all allege that their Eighth Amendment rights have been violated based on the conditions under which they are housed at EMCF, and based on the medical and mental health treatment they have received (or failed to receive) at that facility. Thus, any injunction ordered by the Court would provide relief to each member of the class. Second, injunctive relief clearly predominates over monetary damages claims in this case because Plaintiffs do not seek any monetary judgments on their claims. Third, the Court finds that specific injunctive relief could be ordered in this case to, *inter alia*, clean and repair the plumbing and other housing problems at EMCF, ensure that there is adequate staff and training of staff, and policies are implemented to govern the access to, as well as types of medical and mental health care being provided to, inmates at EMCF. As the types of injunctive relief requested by Plaintiffs would not require that the Court adjudicate the individual class members'

needs or circumstances, the Court finds the injunctive relief requested by Plaintiffs satisfies Rule 23(b)(2).

vi. Conclusion

After reviewing the pleadings, and having found that Plaintiffs have shown that the Rule 23(a) and Rule 23(b)(2) prerequisites are satisfied with respect to the EMCF Class as well as the identified subclasses, the Court finds Plaintiff's Motion for Class Certification should be granted.

C. Appointment of Class Counsel

Plaintiffs also request that their current attorneys be appointed class counsel pursuant to Rule 23(g) of the Federal Rules of Civil Procedure. Under this Rule, "a court that certifies a class must appoint class counsel" and, in so doing, must consider: (1) the work counsel has done in identifying or investigating potential claims in the action; (2) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class. FED. R. CIV. P. 26(g)(1)(A)(i-iv). The Rule also requires that "[c]lass counsel must fairly and adequately

represent the interests of the class." Fed. R. Civ. P. 23(g)(4).

The Court finds that counsel for the named Plaintiffs fulfill the requirements of Rule 23(g). The record shows that the attorneys currently representing Plaintiffs have investigated EMCF, have engaged in voluminous discovery in this case, and have experience litigating similar cases in this and other jurisdictions. The proposed class counsel, which includes attorneys from the National Prison Project of the ACLU and the Southern Poverty Law Center have extensive experience handling complex litigation and class actions. Plaintiffs' counsel have demonstrated, as evidenced by the pleadings before the Court, their familiarity with the applicable law, and appear dedicated to this case. They have also shown they will devote substantial resources to representing the classes, and pursuing this litigation, as evidenced by the number of expert witnesses they have already designated. In sum, the Court concludes that counsel for named Plaintiffs will fairly and adequately represent the interests of the class. The Court, therefore, will appoint them as class counsel for both the general class and subclasses certified by this Opinion and Order.

IV. Conclusion

IT IS THEREFORE ORDERED that Defendants' Motion to Exclude Plaintiffs' Medical and Mental Health Expert Witnesses [Docket No. 222] is hereby denied.

IT IS FURTHER ORDERED that Plaintiff's Motion for Class Certification [Docket No. 179] is hereby granted. This action shall proceed as a class action with one General Class, the EMCF Class, and three Subclasses: the Isolation Subclass, the Mental Health Subclass, and the Units 5 and 6 Subclass.

IT IS FURTHER ORDERED that Membership of the certified General Class and each of the three certified Subclasses is defined as follows:

1. The EMCF Class: All persons who are currently, or will be, confined at the East Mississippi Correctional Facility.

2. The Isolation Subclass: All persons who are currently, or will be, subjected to Defendants' policies and practices of confining prisoners in conditions amounting to solitary confinement at the East Mississippi Correctional Facility.

3. The Mental Health Subclass: All persons who are currently, or will be, subjected to Defendants' mental health care policies and practices at the East Mississippi Correctional Facility.

4. The Units 5 and 6 Subclass: All persons who are currently, or will be, housed in Units 5 and 6 at the East Mississippi Correctional Facility.

IT IS FURTHER ORDERED that the following named Plaintiffs are appointed as class representatives for the General EMCF Class: James Vann, Derrick Hayes, Jeffery Covington, Phillip Fredenburg,

Eric Ward, and John Barrett.

The following named Plaintiffs are appointed as class representatives for the Isolation Subclass: Jermaine Dockery and Derrick Hayes.

The following named Plaintiff is appointed as class representative for the Mental Health Subclass: Joseph Osborne.

The following named Plaintiff is appointed as class representative for the Units 5 and 6 Subclass: Alvin Luckett.

IT IS FURTHER ORDERED that Plaintiffs' current attorneys re appointed as counsel for the certified General Class and each of the three certified Subclasses.

IT IS FURTHER ORDERED that counsel for Plaintiffs shall, on or before October 15, 2015, contact Chambers of United States Magistrate Judge John C. Gargiulo and request the scheduling of a Case Management Conference.

SO ORDERED this the 29th day of September, 2015.

s/ William H. Barbour, Jr
UNITED STATES DISTRICT JUDGE