

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

SYLVESTER BUTLER, KELVIN
FRAZIER, CURT MASSIE, JEREMIAH
THOMAS, EUGENE ULRATH,
REGINALD WILLIAMS,

Plaintiffs,

v.

JAMES V. CROSBY, JR., BRADLEY
CARTER, GEORGE SAPP, STEPHEN
SIRMONES, JOE LAZENBY JR., ALLEN
CLARK, MARK REDD, KEITH
MUSSELMAN, TONY ANDERSON,
JAMES WILSON, WILLIAM MUSE,
COLIN HALLE, STEVEN TRICOCCI,
TIM CHASTAIN, RODNEY BARNETT,
RONNIE BARTON, KENNETH LAMPP,
WENDELL WHITEHURST, STACEY
GREEN, DAVID REYNOLDS, JOHN
RIGGS, GLYNN REEDER, JOHN RIZER,
OSCAR SHIPLEY, DEAN ELLIS,
JEFFREY LINDSEY, BILLY JARVIS,
each in his individual capacity,

Defendants.

Civil Action No. 3:04-cv-917-J-32MMH

AMENDED COMPLAINT AND JURY DEMAND

Plaintiffs, Sylvester Butler, Kelvin Frazier, Curt Massie, Jeremiah Thomas, Reginald Williams and Eugene Ulrath, sue Defendants James V. Crosby, Jr., Bradley Carter, George Sapp, Stephen Sirmones, Joe Lazenby Jr., Allen Clark, Mark Redd, Keith Musselman, Tony Anderson, James Wilson, William Muse, Colin Halle, Steven Tricocci, Tim Chastain, Rodney Barnett,

EXHIBIT A

Ronnie Barton, Kenneth Lampp, Wendel Whitehurst, Stacey Green, David Reynolds, John Riggs, Glynn Reeder, John Rizer, Oscar Shipley, Dean Ellis, Jeffrey Lindsey, and Billy Jarvis, and allege:

Preliminary Statement

1. This is a civil rights action brought by six inmates at Florida State Prison, pursuant to 42 U.S.C. § 1983, seeking compensatory and punitive damages and alleging that Defendants have engaged in a pattern and practice of excessive and unauthorized use of chemical agents against Plaintiffs and other Florida State Prison inmates in violation of the Eighth and Fourteenth Amendments to the United States Constitution. Defendants include Florida State Prison correctional officers who have used chemical agents against the Plaintiffs maliciously and sadistically for the very purpose of causing harm and not in a good faith effort to maintain or restore order. Defendants also include supervisors at Florida State Prison who have participated, facilitated, encouraged, or acquiesced in the correctional officers' abuse of the Plaintiffs with chemical agents.

Jurisdiction

2. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 in that this is a civil action arising under the Constitution of the United States.

3. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1343(a)(3) in that this action seeks to redress the deprivation, under color of state law, of rights secured to the Plaintiffs by the Eighth and Fourteenth Amendments to the Constitution of the United States.

4. The Plaintiffs' claims for relief are predicated upon 42 U.S.C. § 1983, which authorizes actions to redress the deprivation, under color of state law, of rights, privileges and immunities secured to the Plaintiffs by the Constitution and laws of the United States.

5. The Plaintiffs' claims for attorneys' fees and costs is predicated upon 42 U.S.C. § 1988, which authorizes the award of attorneys' fees and costs to prevailing plaintiffs in actions brought pursuant to 42 U.S.C. § 1983.

6. All Plaintiffs have fully exhausted their administrative remedies.

Venue

7. Venue is proper in this District under 28 U.S.C. § 1391(b) because at least one of the Defendants resides in this District and a substantial part of the events and omissions giving rise to Plaintiffs' claims occurred in this District.

Parties

8. Plaintiff, Sylvester Butler, is a prisoner currently incarcerated at Santa Rosa Correctional Institution in Santa Rosa County, Florida. When the events giving rise to his claim occurred, he was incarcerated at Florida State Prison, located in Bradford County, Florida.

9. Plaintiff, Kelvin Frazier, is a prisoner currently incarcerated at Charlotte Correctional Institution in Charlotte County, Florida. When the events giving rise to his claim occurred, he was incarcerated at Florida State Prison, located in Bradford County, Florida.

10. Plaintiff, Curt Massie, is a prisoner currently incarcerated at Desoto Correctional Institution Annex in Desoto County, Florida. When the events giving rise to this his claim occurred, he was incarcerated at Florida State Prison, located in Bradford County, Florida.

11. Plaintiff, Jeremiah Thomas, is a prisoner currently incarcerated at Union Correctional Institution, located in Union County, Florida. When the events giving rise to his claim occurred, he was incarcerated at Florida State Prison, located in Bradford County, Florida.

12. Plaintiff, Eugene Ulrath, is a prisoner currently incarcerated at Union Correctional Institution in Union County, Florida. When the events giving rise to his claim occurred, he was incarcerated at Florida State Prison in Bradford County, Florida.

13. Plaintiff, Reginald Williams, is a prisoner currently incarcerated at Union Correctional Institution in Union County, Florida. When the events giving rise to his claim occurred, he was incarcerated at Florida State Prison in Bradford County, Florida.

14. Defendant, James V. Crosby, Jr. was the Warden of Florida State Prison from February 1998 to July 18, 2001. Defendant Crosby is currently employed as the Secretary of the Florida Department of Corrections. He is sued in his individual capacity.

15. Defendant, Bradley Carter, was the Warden of Florida State Prison from July 18, 2001 to October 1, 2002. He is sued in his individual capacity.

16. Defendant, George Sapp, was an Assistant Warden employed at Florida State Prison from August 2, 1999 to November 1, 2000. He is sued in his individual capacity.

17. Defendant, Stephen Sirmones, was an Assistant Warden employed at Florida State Prison from June 30, 2000 to November 7, 2002. He is sued in his individual capacity.

18. Defendant, Joe Lazenby Jr., was an Assistant Warden employed at Florida State Prison from September 7, 2001 to January 30, 2003. He is sued in his individual capacity.

19. Defendant, Allen Clark, was a Correctional Officer Major and/or Colonel employed at Florida State Prison at all times material to this action. He is sued in his individual capacity.

20. Defendant Mark Redd, was a Correctional Officer Colonel employed at Florida State Prison from September 18, 1998 to June 28, 2001. He is sued in his individual capacity.

21. Defendant, Keith Musselman, was a Correctional Officer Sergeant employed at Florida State Prison at all times material to this action. He is sued in his individual capacity.

22. Defendant, Tony Anderson, was a Correctional Officer Lieutenant employed at Florida State Prison at all times material to this action. He is sued in his individual capacity.

23. Defendant, James Wilson, was a Correctional Officer Sergeant employed at Florida State Prison at all times material to this action. He is sued in his individual capacity.

24. Defendant, William Muse, was a Correctional Officer Captain employed at Florida State Prison at all times material to this action. He is sued in his individual capacity.

25. Defendant, Colin Halle, was a Correctional Officer Lieutenant employed at Florida State Prison at all times material to this action. He is sued in his individual capacity.

26. Defendant, Steven Tricocci, was a Correctional Officer Sergeant employed at Florida State Prison at all times material to this action. He is sued in his individual capacity.

27. Defendant, Tim Chastain, was a Correctional Officer Captain employed at Florida State Prison at all times material to this action. He is sued in his individual capacity.

28. Defendant, Rodney Barnett, was a Correctional Officer Sergeant employed at Florida State Prison at all times material to this action. He is sued in his individual capacity.

29. Defendant, Ronnie Barton, was a Correctional Officer Sergeant employed at Florida State Prison at all times material to this action. He is sued in his individual capacity.

30. Defendant, Kenneth Lampp, was a Correctional Officer Captain employed at Florida State Prison at all times material to this action. He is sued in his individual capacity.

31. Defendant, Wendel Whitehurst, was a Correctional Officer Duty Warden and Assistant Warden employed at Florida State Prison at all times material to this action. He is sued in his individual capacity.

32. Defendant, Stacey Green, was a Correctional Officer Sergeant employed at Florida State Prison at all times material to this action. He is sued in his individual capacity.

33. Defendant, David Reynolds, was a Correctional Officer Sergeant employed at Florida State Prison at all times material to this action. He is sued in his individual capacity.

34. Defendant, John Riggs, was a Correctional Officer Captain employed at Florida State Prison at all times material to this action. He is sued in his individual capacity.

35. Defendant, Glynn Reeder, was a Correctional Officer Sergeant employed at Florida State Prison at all times material to this action. He is sued in his individual capacity.

36. Defendant, John Rizer, was a Correctional Officer Sergeant employed at Florida State Prison at all times material to this action. He is sued in his individual capacity.

37. Defendant, Oscar Shipley, was a Correctional Officer Sergeant employed at Florida State Prison at all times material to this action. He is sued in his individual capacity.

38. Defendant, Dean Ellis, was a Correctional Officer Captain employed at Florida State Prison at all times material to this action. He is sued in his individual capacity.

39. Defendant, Billy Jarvis, was a Major and/or Duty Warden employed at Florida State Prison at all times material to this action. He is sued in his individual capacity.

40. Defendant, Jeffrey Lindsey, was a Correctional Officer Sergeant employed at Florida State Prison at all times material to this action. He is sued in his individual capacity.

41. At all times relevant to the events described herein, the Defendants were acting under color of state law.

Factual Allegations

42. Employees of Florida State Prison are authorized to use a variety of types of force where the circumstances warrant, including hands-on physical force, chemical agents, electronic immobilization devices, batons, and specialty munitions, as described in Rule 33-602.210, Florida Administrative Code, promulgated by the Florida Department of Corrections.

43. Rule 33-602.210(14), F.A.C., provides that three types of chemical agents may be used against prisoners: 1. Oleoresin Capsicum (pepper spray), 2. Orthochlorobenzal Malononitrile or Orthochlorobenzylidene Malononitrile (CS tear gas), and 3. Chloroacetophene (CN tear gas).

44. As described in Rule 33-602.210(14), F.A.C., each of these chemical agents causes, and is intended to cause, intense physical pain when applied to human beings. The physical effects described by the Rule are as follows: (a) OC pepper spray "causes tearing and involuntary closing of the eyes, nasal discharge, sneezing, disorientation, and the sensation of respiratory distress;" (b) CS tear gas "causes eyes to burn and tear, nasal discharge, and skin and

upper respiratory irritation;" and (c) CN tear gas "causes tearing of the eyes, nasal discharge, and skin and upper respiratory irritation."

45. When an inmate is exposed to chemical agents, DOC rule 33-602.210 (14) and accepted correctional practice requires that the inmate be given a shower after the use of force.

46. Each Plaintiff was housed in Close Management at the Florida State Prison each time that he was abused with chemical agents. They were each in single confinement cells that had solid doors and limited ventilation.

47. Chemical agents, including OC pepper spray, CS tear gas, and CN tear gas, became the primary method of force used against prisoners during Defendant Crosby's tenure as Warden of Florida State Prison and continued to increase under his successor, Defendant Carter.

48. At Florida State Prison, chemical agents were used 238 times in 2000, 385 times in 2001, and 447 times in 2002. This represents an 87% increase in the use of chemical agents over this period of time.

49. As Defendants escalated the use of chemical agents, prisoners increasingly complained that correctional officers were using chemical agents as a means of retaliating against them for lawful activities, such as seeking assistance, asking that staff follow the established rules, filing grievances, or otherwise complaining about their conditions of incarceration.

50. Florida State Prison inmates filed countless grievances alleging that correctional officers were using chemical agents on them without justification and in grossly excessive quantities.

51. Defendants Crosby, Carter, Sapp, Sirmones, and Lazenby reviewed numerous inmate grievances alleging abuse with chemical agents and had the responsibility to respond appropriately. They consistently failed to follow up on grievances alleging abuse with chemical agents, and failed to take action even when Department of Corrections Inspector General's Office, charged with investigating claims of abuse throughout the Florida prison system, determined that a complaint should be resolved at the institutional level.

52. Defendants Crosby, Carter, Sapp, Sirmones, and Lazenby reviewed the use of force reports submitted by the correctional officers who used chemical agents against inmates. They were responsible for making a recommendation as to whether the use of force should be approved or disapproved.

53. On information and belief, Defendants Crosby, Carter, Sapp, Sirmones and Lazenby never once recommended that the use of chemical agents be disapproved.

54. On information and belief, Defendants Crosby, Carter, Sapp, Sirmones and Lazenby never requested a special investigation into the emerging pattern of increased use of chemical agents and the corresponding claims that these weapons were being used to abuse and injure Florida State Prison inmates, including Plaintiffs.

55. On information and belief, Defendants Crosby, Carter, Sapp, Sirmones and Lazenby never made an effort to identify officers who were using chemical agents as a matter of routine or inquire about why there was such a dramatic rise in the use of these weapons.

56. Defendants Crosby and Carter promoted officers who were using chemical agents with increasing frequency, even though there were rising numbers of complaints of abuse against those same officers.

57. Defendants Crosby and Carter failed to train, supervise and discipline correctional officers to prevent the excessive and unjustified use of chemical agents against Florida State Prison inmates, including Plaintiffs.

58. Defendants Crosby and Carter failed to require videotaping of the use of chemical agents, although video cameras were available at the prison and every other type of force was required to be videotaped for review.

59. Defendants Crosby and Carter's policy of not videotaping the use of chemical agents was intended to avoid creating a record that would allow meaningful review of the use of chemical agents.

60. Defendants Redd, Clark and Jarvis held the most senior security staff positions at Florida State Prison and were responsible for direct supervision of the correctional officers who were using chemical agents.

61. Defendants Redd, Clark, and Jarvis actively encouraged the security staff to use chemical agents to humiliate and abuse prisoners and frequently authorized the use of chemical agents with full knowledge that the force was being used solely to inflict pain, including against Plaintiffs.

62. Defendants Crosby, Carter, Sapp, Sirmones, Lazenby, Redd, Clark and Jarvis routinely authorized the use of chemical agents, including against Plaintiffs, without taking steps

to ensure that the use of force was consistent with constitutional standards and Rule 33-602.210, F.A.C.

63. Defendants Crosby, Carter, Sapp, Sirmones, Lazenby, Redd, Clark and Jarvis actively implemented an unwritten policy that correctional officers were to use chemical agents to inflict corporal punishment on Florida State Prison inmates as a method of injuring and humiliating them.

64. In August 2000, a group of Florida State Prison inmates went on a hunger strike to protest the increasingly brutal use of chemical agents against them. They requested a meeting with Defendant Crosby to discuss their demand that he take action to stop the completely unjustified use of chemical agents against them.

65. Defendant Crosby refused to meet with the prisoners who were seeking relief from the officers who were using chemical agents against them for improper reasons and in response to past conduct.

66. As a result of the pattern and practice of using chemical agents to inflict pain, encouraged and facilitated by Defendants Crosby, Carter, Sapp, Sirmones, Lazenby, Redd, Clark, and Jarvis, the Plaintiffs suffered severe injuries to their skin, eyes, lungs, or mental health.

Sylvester Butler

67. Plaintiff Butler is a prisoner in the custody of the Florida Department of Corrections. At all times material to the Complaint he was incarcerated at Florida State Prison.

68. Plaintiff Butler has a history of psychiatric problems and is borderline developmentally disabled.

69. On October 3, 2000, while at Florida State Prison, Plaintiff Butler sought medical attention by declaring a medical emergency to security staff.

70. In response, Defendants Chastain and Reeder turned off the exhaust fans, approached his cell, unlocked the food flap and Defendant Reeder began spraying chemical agents into the cell. The can used was approximately the size of a fire extinguisher, with a long hose and nozzle that was inserted into the cell.

71. Despite Plaintiff Butler's compliance with all orders, Defendants returned twice during the next hour and sprayed tear gas into his cell. No warnings were given before chemical agents were used.

72. Defendants did not take Plaintiff Butler to the shower so he could rinse off the chemicals.

73. Defendant Clark authorized this use of force against Plaintiff Butler with full knowledge that it was being used solely as a means of torture and intimidation.

74. Defendant Reeder wrote a pretextual and false Use of Force report alleging that force was used because Plaintiff Butler was "beating on his cell door and was refusing all verbal orders from me to cease his disorderly conduct or chemical agents would be administered." He also stated that he used only three 1-second bursts of pepper spray and of tear gas.

75. Defendant Reeder fabricated this Use of Force Report with the intention of covering up his unjustified and excessive use of chemical agents on Plaintiff Butler.

76. In a further attempt to conceal his improper use of force, Defendant Reeder wrote Plaintiff Butler a disciplinary report for disorderly conduct.

77. Defendants Reeder, Chastain and Clark were aware that the use of force on Plaintiff Butler was not necessary to maintain or restore order because he was locked in his cell and only asking for medical attention.

78. Plaintiff Butler developed large, water filled blisters on his hip. The blisters eventually broke and Plaintiff Butler's skin peeled off, leaving his entire hip with a raw, seeping wound.

79. Plaintiff Butler has exhausted all available administrative remedies regarding the use of chemical agents against him on October 3, 2000.

Kelvin Frazier

80. Plaintiff Kelvin Frazier is a prisoner in the custody of the Florida Department of Corrections. At all times material to the Complaint he was incarcerated at Florida State Prison.

81. Plaintiff Frazier has asthma, a condition that causes inflammation of the lungs and reduced breathing capacity.

82. On January 4, 2001, Defendants Reynolds and Riggs sprayed Plaintiff Frazier in response to his request to speak to Defendant Riggs, a Captain.

83. When Defendant Riggs arrived at Plaintiff Frazier's cell, instead of speaking with Plaintiff Frazier he directed Defendant Reynolds to spray pepper spray into the cell using a canister approximately the size of a fire extinguisher. No orders or warnings were issued to

Plaintiff Frazier. Defendants Riggs and Reynolds continued to spray pepper spray and tear gas into Plaintiff Frazier's over the course of the next half hour.

84. The quantity of chemical agents used by Defendants was so great that Plaintiff Frazier was soaking wet, as were the walls, floor, and his personal property.

85. After exposure to chemical agents, Plaintiff Frazier had an asthma attack leaving him in respiratory distress. Blisters later formed on Plaintiff Frazier's neck and his skin started to peel off. Plaintiff Frazier had second-degree chemical burns on his neck and around his left ear.

86. In order to cover up the unjustified use of force, Defendant Reynolds wrote a Use of Force Report that stated Plaintiff Frazier was "being loud and disruptive by yelling and kicking on his cell door" and that "he was ordered numerous times to cease his disruptive conduct, but to no avail." He also stated that he used only three 1-second bursts of both pepper spray and tear gas.

87. The Use of Force Report written by Defendant Reynolds is false.

88. Plaintiff Frazier's disciplinary report for disorderly conduct, written to further conceal the Defendants' unjustified use of force, was overturned on appeal.

89. On January 11, 2001, Defendants Reeder and Lampp sprayed Plaintiff Frazier with chemical agents in retaliation for the grievances he filed about the previous week's use of force. Plaintiff Frazier received no warnings from Defendants before they sprayed chemical agents into his cell.

90. The chemical agents aggravated the burns on Plaintiff Frazier's neck and also burned his forearms.

91. Defendants Reeder and Lampp were aware that the use of force on Plaintiff Frazier was not necessary to maintain or restore order because Plaintiff Frazier was quiet and locked in his cell.

92. Defendant Reeder wrote a Use of Force Report stating that he "observed Inmate Frazier beating on his cell door, and [sic] was refusing all verbal orders from me to cease his disorderly conduct or chemical agents would be administered." He also stated that he sprayed only three 1-second bursts of pepper spray.

93. This was a false report written to cover up the unjustified and excessive use of force against Plaintiff Frazier.

94. Plaintiff Frazier received a disciplinary report for disorderly conduct but it was overturned on appeal.

95. Plaintiff Frazier has exhausted all available administrative remedies regarding the matters described herein. He filed grievances about both incidents all the way to the Secretary's office, explaining that in each case the use of chemical agents was unjustified. He received the same responses back on both sets of grievances, each stating that his request for action was denied because the Office of the Inspector General was conducting a review. Plaintiff Frazier was never notified about the outcome of the Inspector General's investigations.

Curt Massie

96. Plaintiff Curt Massie is a prisoner in the custody of the Florida Department of Corrections. At all times material to the Complaint he was housed at Florida State Prison.

97. Plaintiff Massie is a 41-year-old man diagnosed with Obsessive Compulsive Disorder and Delusional Disorder. At all times material to the Complaint he was taking psychotropic medication to treat his mental illness.

98. On October 8, 2000, Defendants Green and Halle used chemical agents on Plaintiff Massie to punish him for making a funny face behind a nurse's back.

99. Defendants Green and Halle failed to issue any warnings or orders to Plaintiff Massie before emptying cans of pepper spray and CS tear gas into his locked cell.

100. To justify the use of chemical agents, Defendant Green wrote a Use of Force Report stating that force was used because Plaintiff Massie had cursed at staff, screamed threats, and refused several orders to stop. He also stated that he used only three 1-second bursts of both pepper spray and tear gas.

101. The Use of Force Report written by Defendant Green falsely states the reasons for the use of force and the amount of chemical agents used on Plaintiff Massie.

102. Defendant Clark authorized this use of force with full knowledge that it was unjustified.

103. When Plaintiff Massie was taken to the shower, Defendant Green turned the hot water on to intensify the pain Plaintiff Massie was experiencing from the chemical agents.

104. Defendants failed to give Plaintiff Massie clean sheets for several hours and he was never issued a clean blanket.

105. Plaintiff Massie suffered second-degree chemical burns that caused large fluid-filled blisters and inflamed skin on his left arm, left leg, back and hip. The blisters on Plaintiff Massie's skin later burst, leaving raw exposed skin.

106. Plaintiff Massie still experiences pain and burning when his skin is exposed to direct sunlight.

107. Despite Plaintiff Massie's extreme reaction to chemical agents, Defendants Bridges and Lampp again authorized and used these weapons on him on September 23, 2001.

108. In order to avoid creating a record that would allow meaningful review of the use of chemical agents against Plaintiff Massie, Defendants Clark, Green, and Halle failed to videotape either of the incidents when chemical agents were used against him, even though these were not spontaneous uses of force and there was ample time to obtain a video camera.

109. Plaintiff Massie has exhausted all available administrative remedies regarding the matters described herein. In his grievance appeal to the DOC Central Office he explained that Defendant Green used force against him vindictively and excessively. The response from Central Office states that the DOC Inspector General's office was reviewing the subject of his grievance and that his request for action was denied.

110. After an investigation, the DOC Inspector General's office approved this use of force on March 27, 2001, despite the inspectors' knowledge that the use of force against Plaintiff Massie was in response to past behavior and not in response to ongoing disorderly conduct.

Jeremiah Thomas

111. Plaintiff Jeremiah Thomas is a prisoner in the custody of the Florida Department of Corrections. At all times material to the Complaint he was housed at Florida State Prison.

112. Plaintiff Thomas is a 31-year-old man with an extensive history of psychiatric problems. He suffers from Schizoaffective Disorder, which causes him to experience auditory hallucinations and bouts of mania during which he does not sleep for days and makes rhythmic noises by talking to himself or banging on his cell walls and door. Since his incarceration in 1991, he has been civilly committed to the Correctional Mental Health Institution several times, frequently admitted for in-patient mental health treatment, and is currently housed in the in-patient Transitional Care Unit at Union Correctional Institution.

113. Plaintiff Thomas has been diagnosed with asthma, a medical condition that causes inflammation of the lungs and reduced breathing capacity.

114. On September 20, 2000, at approximately 11:20 a.m., Mr. Thomas cut and mutilated his forearm. He was seen by mental health staff and he asked for help.

115. On September 20, 2000, at approximately 3:00 p.m., mental health staff counseled Mr. Thomas regarding his refusal to take his psychotropic medication the previous evening.

116. On September 20, 2000, Defendant Musselman sprayed a large quantity of pepper spray into Plaintiff Thomas's cell without first issuing any orders or warnings. This force was used at the direction of Defendant Anderson and with the authorization of Defendant Clark.

117. In order to cover up the excessive quantity of chemical agents he used, Defendant Musselman wrote a report stating that he used only three 1-second bursts of chemical spray. This statement is false.

118. The next day, September 21, 2000, Mr. Thomas was in his cell when Defendant Wilson sprayed a large amount of pepper spray into Plaintiff Thomas' cell without warning. This was at the direction of Defendant Muse and with the authorization of Defendant Clark.

119. In his Use of Force report Defendant Wilson falsely stated that he used only three 1-second bursts of spray. This is a false statement designed to cover up the grossly excessive quantities of chemical agents used.

120. Two days later, September 23, 2000, Plaintiff Thomas was in his cell when Defendant Wilson failed to issue any warnings or orders to Plaintiff Thomas before spraying him with both pepper spray and tear gas. This force was used at the direction of Defendant Halle and with the authorization of Defendant Clark.

121. Again, Defendant Wilson wrote a false Use of Force Report stating that he had used only three 1-second bursts of both pepper spray and CN tear gas to cover up the fact that he used great quantities of chemical agents that soaked Plaintiff Thomas's entire body.

122. The next day, on September 24, 2000, Defendant Tricocci sprayed Plaintiff Thomas with chemical agents without first issuing any orders or warnings. This force was used at the direction of Defendant Chastain and with the authorization of Defendant Clark. This was the fourth time in five days that Defendant Clark authorized the use of force against Plaintiff Thomas.

123. In his Use of Force Report, Defendant Tricocci falsely stated that he used only three 1-second bursts of spray on Plaintiff Thomas.

124. During this time Plaintiff Thomas was experiencing an acute psychiatric breakdown and was in need of mental health care. During the post-use of force exam conducted by a nurse at approximately 3:00 p.m., Mr. Thomas exhibited disturbing signs of psychosis. The nurse noted that Mr. Thomas told her that he played professional football with the Dolphins in Philadelphia. She also noted that Mr. Thomas smelled like urine.

125. Plaintiff Thomas was severely burned by the excessive amount of chemical agents used on September 20, 21, 23 and 24, 2000. He had painful blisters and open wounds on his ear and neck, abdomen, left arm, upper back and lower right leg.

126. In addition to the intense burning sensation and second-degree burns, each time they sprayed Mr. Thomas he could barely breathe and was left taking little gasps of air for days afterward. He felt like he was going to die and he frequently wept from the pain.

127. On September 25, 2000, Defendant Sapp, at that time the Assistant Warden at FSP, reviewed and approved the uses of force on Plaintiff Thomas from September 20, 21, 23 and 24, 2000. After reviewing these reports, he was aware that Plaintiff Thomas was having symptoms of psychosis and mania and that he had blisters and burns all over his body. Despite this knowledge, he took no action to prevent the further use of force against Plaintiff Thomas or to ensure that he received proper mental health treatment.

128. On September 25, 2000, Plaintiff Thomas was in his cell when Defendant Barnett sprayed Plaintiff Thomas with chemical agents three separate times without ever issuing any

orders or warnings. This force was used at the direction of Defendant Chastain and with the authorization of Defendant Whitehurst.

129. Defendant Barnett falsified his Use of Force Report to cover up for the grossly excessive quantities of pepper spray, CN tear gas, and CS tear gas he used on Plaintiff Thomas.

130. The following day, September 26, 2000, Defendant Barton sprayed a large amount of pepper spray into Plaintiff Thomas' cell. No orders or warnings were issued beforehand. This force was used at the direction of Defendant Lampp and with the authorization of Defendant Whitehurst.

131. Defendant Barton wrote a Use of Force Report that falsely stated that he used only three 1-second bursts of chemical spray on Plaintiff Thomas.

132. Each of the Defendants on the security staff who were involved in using or authorizing the use of chemical agents against Plaintiff Thomas on September 20, 21, 23, 24, 25 and 26, 2000, including Defendants Musselman, Anderson, Clark, Wilson, Muse, Halle, Tricocci, Chastain, Barnett, Barton, Lampp, and Whitehurst, were aware that Plaintiff Thomas was exhibiting signs of psychosis and was in need of mental health care.

133. On September 27, 2000, Mr. Thomas was evaluated in the medical clinic and admitted to the infirmary for treatment for his chemical burns. He was also placed on psychiatric observation due to his psychotic and manic behavior. Medical notes indicate that he exhibited multiple signs of psychiatric decompensation, including severe psychomotor agitation, loud and pressured speech, extreme and unpredictable mood swings, disorganized thinking and memory impairment.

134. On September 29, 2000, Plaintiff Thomas was transferred to the Crisis Stabilization Unit at Union Correctional Institution for intensive mental health treatment. As a measure of his extreme psychotic breakdown, he told his doctors there that his injuries were from assaults by other inmates.

135. It took over six months for Mr. Thomas' mental condition to stabilize after the repeated and unjustified use of force against him in lieu of proper mental health treatment. Plaintiff Thomas has remained in an in-patient mental health care unit for over two years.

136. Plaintiff Thomas is afraid that he will be sprayed again with chemical agents when he is returned to a Close Management unit.

137. In order to avoid creating a record that would allow meaningful review of the use of chemical agents against Plaintiff Thomas, Defendants repeatedly failed to videotape the use of chemical agents against him, even though these were not spontaneous uses of force and there was ample time to obtain a video camera.

138. Each use of chemical agents against Plaintiff Thomas was approved without a proper investigation.

139. Plaintiff Thomas has exhausted all available administrative remedies regarding the matters described herein.

Eugene Ulrath

140. Plaintiff Eugene Ulrath is a prisoner in the custody of the Florida Department of Corrections. At all times material to the Complaint he was incarcerated at Florida State Prison.

141. Plaintiff Ulrath was transferred to Florida State Prison on October 8, 2002. At that time he was classified as an S-3, the most serious outpatient psychiatric classification, assigned to inmates with very acute mental health needs.

142. The same day he arrived, October 8, 2002, Plaintiff Ulrath sought mental health care by declaring a psychological emergency to several members of the security staff and to two different nurses on the wing. Every single one of his requests was ignored.

143. A few hours after his last attempt to declare a psychological emergency, Plaintiff Ulrath was lying quietly in his cell when Defendant Shipley repeatedly sprayed Plaintiff Ulrath with pepper spray and tear gas under the supervision of Defendant Ellis and with the authorization of Defendant Jarvis.

144. The Defendants gave no warnings or orders to Plaintiff Ulrath before using chemical agents against him.

145. Defendant Shipley authored a Use of Force Report alleging that Plaintiff Ulrath was sprayed because he was causing a disturbance on the wing by kicking his cell door and encouraging other inmates to do the same. He further stated that he only used a total of six one-second bursts of pepper spray and three one-second bursts of tear gas.

146. The Use of Force report is a false statement of Plaintiff Ulrath's conduct and of the amount of gas used.

147. The next day, October 9, 2002, Plaintiff Ulrath was again quiet in his cell when Defendant Lindsey, under the supervision of Defendant Lampp and with the authorization of Defendant Jarvis, sprayed him with chemical agents without warning.

148. In an effort to cover up this malicious use of force, Defendant Lindsey wrote a Use of Force Report that stated Plaintiff Ulrath was kicking on his cell door and refusing all orders to stop. He also stated that he only used a total of six one-second bursts of pepper spray and three one-second bursts of tear gas.

149. This Use of Force Report is completely false and is designed to conceal Defendants Lindsey, Lampp, and Jarvis' vindictive use of force on Plaintiff Ulrath because they knew he was having psychological problems.

150. On October 10, 2002, Plaintiff Ulrath attempted to commit suicide by hanging himself with his bed sheet. He was placed in a special suicide observation cell and then transferred to inpatient mental health unit at Union Correctional Institution. Plaintiff Ulrath continues to require inpatient psychiatric treatment.

151. As a result of being exposed to an excessive quantity of chemical agents, Plaintiff Ulrath suffered chemical burns and developed large blisters on his back, buttock and leg.

152. Plaintiff Ulrath has exhausted his administrative remedies. He filed a formal grievance on December 5, 2002, explaining that he was sprayed without warning while lying quietly in his cell. The response stated that his allegations had been referred to the Inspector General's office for review and to that extent he could consider his grievance approved. His appeal to Defendant Crosby's office was denied. Plaintiff Ulrath was never informed of the outcome of the Inspector General's review.

Reginald Williams

153. Reginald Williams is a prisoner in the custody of the Florida Department of Corrections. At all times material to the Complaint he was incarcerated at Florida State Prison.

154. On October 24, 2001, Defendants Rizer, Reynolds and Riggs sprayed Plaintiff Williams with chemical agents while he was quiet in his cell solely in retaliation for litigation he had filed against prison officials.

155. Defendant Lazenby authorized the use of chemical agents against Plaintiff Williams without properly determining if the use of force was necessary.

156. Defendant Rizer sprayed the chemical agents directly into Plaintiff Williams' face, immediately blinding him and causing intense pain and burning. He could not rinse his eyes because Defendants continued to spray more chemical agents into the cell.

157. When Plaintiff Williams was finally allowed to shower, the Defendants intentionally turned on very hot water, intensifying the burning and pain on his skin and in his eyes.

158. Defendant Rizer wrote a Use of Force Report alleging that chemical agents were used because Plaintiff Williams was being disorderly and causing a disturbance on the wing. He also stated that he only used a total of six one-second bursts of pepper spray.

159. This report is pretextual, false, and written to cover up Defendant Rizer's unjustified and excessive use of chemical agents on Plaintiff Williams.

160. As a result of having chemical agents sprayed directly into his eyes, the vision in Plaintiff Williams' right eye has been permanently damaged and he now must wear glasses to see clearly.

161. Plaintiff Williams has exhausted all available administrative remedies regarding the use of chemical agents against him on October 24, 2001.

CAUSE OF ACTION: EIGHTH AMENDMENT VIOLATIONS

162. Plaintiffs repeat and reallege paragraphs 1 through 161 as if fully set forth herein.

163. Plaintiff Butler's right to be free from cruel and unusual punishment, which is guaranteed by the Eighth Amendment, was violated by Defendants Reeder, Chastain and Clark when they knowingly and willfully used, directed or authorized the use of chemical agents against Plaintiff Butler maliciously and sadistically for the very purpose of causing harm and not in a good faith effort to maintain or restore discipline.

164. As a result of Defendants Reeder, Chastain, Clark, Crosby, Redd, and Sapp's unconstitutional actions, Plaintiff Butler suffered second-degree chemical burns, pain and suffering, respiratory distress, mental and emotional distress, humiliation and degradation.

165. Plaintiff Frazier's right to be free from cruel and unusual punishment, which is guaranteed by the Eighth Amendment, was violated by Defendants Reynolds, Reeder, Riggs, and Lampp when they knowingly and willfully used, directed or authorized the use of chemical agents against Plaintiff Frazier maliciously and sadistically for the very purpose of causing harm and not in a good faith effort to maintain or restore discipline.

166. As a result of Defendants Reynolds, Rizer, Riggs, Crosby, Redd, and Sapp's unconstitutional actions, Plaintiff Frazier suffered second-degree chemical burns, inflammation of the skin on his arms, pain and suffering, mental and emotional distress, humiliation and degradation.

167. Plaintiff Massie's right to be free from cruel and unusual punishment, which is guaranteed by the Eighth Amendment, was violated by Defendants Green, Halle and Clark when they knowingly and willfully used, directed or authorized the use of chemical agents against Plaintiff Massie maliciously and sadistically for the very purpose of causing harm and not in a good faith effort to maintain or restore discipline.

168. As a result of Defendants Green, Clark, Crosby, Redd, and Sapp's unconstitutional actions, Plaintiff Massie suffered second-degree chemical burns over a large portion of his body, increased anxiety related to his mental illness, pain and suffering, mental and emotional distress, humiliation and degradation.

169. Plaintiff Thomas's right to be free from cruel and unusual punishment, which is guaranteed by the Eighth Amendment, was violated by Defendants Musselman, Wilson, Tricocci, Barnett, Barton, Anderson, Muse, Chastain, Lampp, and Clark when they knowingly and willfully used, directed or authorized the use of chemical agents against Plaintiff Thomas maliciously and sadistically for the very purpose of causing harm and not in a good faith effort to maintain or restore discipline.

170. Plaintiff Thomas's right to be free from cruel and unusual punishment, which is guaranteed by the Eighth Amendment, was violated by Defendant Sapp when, with knowledge

of Plaintiff Thomas's injuries and psychotic state, he acted with deliberate indifference to the substantial risk that Plaintiff Thomas would continue to be abused with chemical agents.

171. As a result of Defendants Musselman, Anderson, Clark, Wilson, Muse, Halle, Tricocci, Chastain, Barnett, Barton, Lampp, Whitehurst, Crosby, Redd, and Sapp's unconstitutional actions, Plaintiff Thomas suffered second-degree chemical burns over a large portion of his body, respiratory distress, increased anxiety related to his mental illness, pain and suffering, mental and emotional distress, humiliation and degradation.

172. Plaintiff Ulrath's right to be free from cruel and unusual punishment, which is guaranteed by the Eighth Amendment, was violated by Defendants Shipley, Ellis, Lindsey, Lampp and Jarvis when they knowingly and willfully used, directed or authorized the use of chemical agents against Plaintiff Ulrath maliciously and sadistically for the very purpose of causing harm and not in a good faith effort to maintain or restore discipline.

173. As a result of Defendants Lindsey, Shipley, Ellis, Jarvis, Crosby, Carter, Sapp, Sirmones, Lampp, and Lazenby unconstitutional actions, Plaintiff Ulrath suffered chemical burns over a large portion of his body, increased anxiety related to his mental illness, pain and suffering, mental and emotional distress, humiliation and degradation.

174. Plaintiff Williams' right to be free from cruel and unusual punishment, which is guaranteed by the Eighth Amendment, was violated by Defendants Rizer, Reynolds, Riggs and Lazenby when they knowingly and willfully used, directed or authorized the use of chemical agents against Plaintiff Williams maliciously and sadistically for the very purpose of causing harm and not in a good faith effort to maintain or restore discipline.

175. As a result of Defendants Reynolds, Crosby, Carter, Sapp, Sirmones, and Lazenby unconstitutional actions, Plaintiff Williams suffered permanent damage to his right eye, pain and suffering, mental and emotional distress, humiliation and degradation.

176. The excessive and unjustified use of chemical agents against Plaintiffs Butler, Frazier, Massie, Thomas, Williams and Ulrath is part of a pattern of hundreds of improper uses of force against Florida State Prison inmates.

177. The pattern and practice of using chemical agents solely to inflict physical pain and injury on Florida State Prison inmates began in 1999 under the supervision of Defendant Crosby and continued under his successor, Defendant Carter.

178. On information and belief, Defendants Crosby, Carter, Sapp, Sirmones and Lazenby, Redd, Clark and Jarvis failed to take any corrective action to halt the widespread and obvious abuse with full knowledge that their subordinates were repeatedly using chemical agents maliciously and sadistically for the very purpose of causing harm and not in a good-faith effort to maintain or restore discipline. Their failure to act resulted in the use of unjustified and excessive force against Plaintiffs Butler, Frazier, Massie, Thomas, Williams and Ulrath.

179. On information and belief, Defendants Crosby, Carter, Sapp, Sirmones, Lazenby, Redd, Clark and Jarvis, by implementing the policies and customs discussed in paragraphs 47 to 66, facilitated and encouraged their subordinates to use chemical agents maliciously and sadistically for the very purpose of causing harm and not in a good-faith effort to restore order or maintain discipline or for any other legitimate penological reason.

180. On information and belief, Defendants Crosby, Carter, Sapp, Sirmones, Lazenby, Redd, Clark and Jarvis acted with deliberate indifference to the substantial and obvious risk that their subordinates would use chemical agents maliciously or sadistically for the very purpose of causing harm and not in a good-faith effort to restore order or maintain discipline or for any other legitimate penological reason.

181. By their knowing failure to stop the widespread abuse, and by implementing policies and customs that encouraged and facilitated the use of chemical agents maliciously or sadistically for the very purpose of causing harm and not in a good-faith effort to restore order or maintain discipline or for any other legitimate penological reason, Defendants Crosby, Carter, Sapp, Sirmones, Lazenby, Redd, Clark, and Jarvis violated the rights of Plaintiffs to be free from cruel and unusual punishment as guaranteed by the Eighth Amendment, made applicable to the States by the Fourteenth Amendment, of the Constitution of the United States.

182. WHEREFORE, on this count Plaintiffs request this Court grant the following relief:

- A. Plaintiff Butler seeks compensatory and punitive damages from Defendants Reeder, Chastain, Clark, Crosby, Redd, and Sapp.
- B. Plaintiff Frazier seeks compensatory and punitive damages from Defendants Reynolds, Reeder, Lampp, Riggs, Crosby, Redd, and Sapp.
- C. Plaintiff Massie seeks compensatory and punitive damages from Defendants Green, Clark, Crosby, Redd, Halle, and Sapp.

- D. Plaintiff Thomas seeks compensatory and punitive damages from Musselman, Anderson, Clark, Wilson, Muse, Halle, Tricocci, Chastain, Barnett, Barton, Lampp, Whitehurst, Crosby, Redd, and Sapp.
- E. Plaintiff Ulrath seeks compensatory and punitive damages from Defendants Lindsey, Shipley, Ellis, Jarvis, Crosby, Carter, Sapp, Sirmones, Lampp, and Lazenby.
- F. Plaintiff Williams seeks compensatory and punitive damages from Defendants Reynolds, Crosby, Carter, Sapp, Sirmones, Rizer, Riggs, and Lazenby.
- G. All Plaintiffs seek attorneys' fees and costs, pursuant to 42 U.S.C. § 1988.
- H. All Plaintiffs seek any other relief as the Court may deem proper.

Dated this 11th day of May, 2005.

Respectfully submitted,

Holland & Knight LLP

s/ George E. Schulz, Jr.
George E. Schulz, Jr.; Florida Bar #169507
Michael Agliata; Florida Bar #167665
50 North Laura Street, Suite 3900
Jacksonville, Florida 32202
(904) 353-2000; (904) 358-1872 (Fax)

Lisa White Shirley; Florida Bar No. 478725
Cassandra J. Capobianco; Florida Bar No. 614734
Kristen Cooley Lentz; Florida Bar No. 649635
Christopher M. Jones; Florida Bar No. 994642
Florida Institutional Legal Services
1010-B NW 8th Avenue

Gainesville, FL 32601
(352) 375-2494; (352) 271-4366 (Fax)

Peter M. Siegel; Florida Bar No. 227862
Randall C. Berg; Florida Bar No. 318371
Cullen O'Brien; Florida Bar No. 597341
Florida Justice Institute, Inc.
2870 First Union Financial Center
200 South Biscayne Boulevard
Miami, FL 33131-2310
(305) 358-2081; (305) 358-0910 (Fax)

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of May, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

s/ George E. Schulz, Jr. _____
Fla. Bar No. 169507
Attorney for Plaintiffs