

No. _____

IN THE

Supreme Court of the United States

CORNELIUS LORENZO WILSON,

v.

**DENNIS GRIMES; SID J. GAUTREAUX, III; LINDA OTTESEN; CITY
OF BATON ROUGE/PARISH OF EAST BATON ROUGE
CONSOLIDATED GOVERNMENT; DR. RAMAN SINGH; TAMRYA
YOUNG; KAREN COMEAUX,**

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

**PETITION FOR A WRIT OF CERTIORARI
APPENDIX**

Emily H. Posner
7214 St. Charles Avenue
Campus Box 913
New Orleans, Louisiana 70118
(225) 746-8820
ep@emilyposnerlaw.com

TABLE OF CONTENTS

Document Page	Appendix
Fifth Circuit Opinion (May 15, 2019) <i>Wilson v. Grimes</i> Case No. 18-30475	1(a)
District Court Opinion (March 18, 2018) <i>Wilson v. Grimes</i> Case No. 15-680	6(a)
Second Amended Complaint (July 13, 2017)	33(a)

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

June 06, 2019

Mr. Michael L. McConnell
Middle District of Louisiana, Baton Rouge
United States District Court
777 Florida Street
Room 139
Baton Rouge, LA 70801

No. 18-30475 Cornelius Wilson v. Dennis Grimes, et al
USDC No. 3:15-CV-680

Dear Mr. McConnell,

Enclosed is a copy of the judgment issued as the mandate and a copy of the court's opinion.

Sincerely,

LYLE W. CAYCE, Clerk

Deborah M. Graham

By: Debbie T. Graham, Deputy Clerk

CC:

Mr. Arthur Howell Andrews
Mrs. Mary G. Erlingson
Ms. Tara L. Johnston
Ms. Emily Henrion Posner
Ms. Catherine Susan St. Pierre
Mr. Jeffery A. Wheeler II

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-30475
Summary Calendar

D.C. Docket No. 3:15-CV-680

United States Court of Appeals
Fifth Circuit
FILED
May 15, 2019
Lyle W. Cayce
Clerk

CORNELIUS LORENZO WILSON,

Plaintiff - Appellant

v.

DENNIS GRIMES, Lieutenant Colonel; SID J. GAUTREAUX, III, Sheriff; LINDA OTTESEN; CITY OF BATON ROUGE/PARISH OF EAST BATON ROUGE CONSOLIDATED GOVERNMENT; JAMES M. LEBLANC; ROBERT TANNER; TIMOTHY HOOPER; ABC INSURANCE COMPANIES; RAMAN SINGH, Doctor; TAMRYA YOUNG; KAREN COMEAUX; OTHER AS YET UNKNOWN DEFENDANTS,

Defendants - Appellees

Appeal from the United States District Court for the
Middle District of Louisiana

Before SMITH, WIENER, and WILLETT, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is affirmed.



**Certified as a true copy and issued
as the mandate on Jun 06, 2019**

Attest:

Lyle W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

No. 18-30475
Summary Calendar

FILED
May 15, 2019

Lyle W. Cayce
Clerk

CORNELIUS LORENZO WILSON,

Plaintiff-Appellant

v.

DENNIS GRIMES, Lieutenant Colonel; SID J. GAUTREAUX, III, Sheriff; LINDA OTTESEN; CITY OF BATON ROUGE/PARISH OF EAST BATON ROUGE CONSOLIDATED GOVERNMENT; JAMES M. LEBLANC; ROBERT TANNER; TIMOTHY HOOPER; ABC INSURANCE COMPANIES; RAMAN SINGH, Doctor; TAMRYA YOUNG; KAREN COMEAUX; OTHER AS YET UNKNOWN DEFENDANTS,

Defendants-Appellees

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:15-CV-680

Before SMITH, WIENER, and WILLETT, Circuit Judges.

PER CURIAM:*

Plaintiff-Appellant Cornelius Lorenzo Wilson, Louisiana prisoner #356241, filed a 42 U.S.C. § 1983 lawsuit against, *inter alia*, Sheriff Sid J. Gautreaux, III, Lieutenant Colonel Dennis Grimes, Linda Ottesen, Raman

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 18-30475

Singh, M.D., Tamyra Young, and Karen Comeaux, alleging that they were liable under the Eighth Amendment for denying him timely access to a medical specialist during his confinement in the East Baton Rouge Parish Prison (EBRPP) and various facilities overseen by the Louisiana Department of Safety and Corrections (DOC), which resulted in the late diagnosis and treatment of his throat cancer and required him to undergo a laryngectomy. He further alleged that Grimes and Ottesen, acting in their official capacities, were responsible under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978), for establishing policies or practices that denied him access to constitutionally adequate care. The district court granted the defendants' motions to dismiss pursuant to Federal Rule of Procedure 12(b)(6) for failure to state a claim on the grounds that the allegations in Wilson's second amended complaint failed to state a plausible claim that any of the defendants were deliberately indifferent to his serious medical needs or to defeat the defendants' assertions of qualified immunity. Wilson now appeals the dismissal of his claims and the district court's denial of his request to file a third amended complaint.

Our de novo review of Wilson's second amended complaint, which was prepared by counsel, confirms that the district court correctly concluded that his factual allegations, taken as true, complain of the delay in providing access to a medical specialist rather than the denial of medical care and, therefore, effectively constitute only a disagreement with his medical treatment. *See Mendoza v. Lynaugh*, 989 F.2d 191, 195 (5th Cir. 1993). Accordingly, Wilson's complaint failed to state a facially plausible claim that any defendant was deliberately indifferent to a serious medical need. *See Thomas v. Chevron U.S.A., Inc.*, 832 F.3d 586, 590 (5th Cir. 2016); *Alderson v. Concordia Par. Corr. Facility*, 848 F.3d 415, 421-22 (5th Cir. 2017); *Gobert v. Caldwell*, 463 F.3d 339, 345-46 (5th Cir. 2006). Further, the district court did not err in dismissing

No. 18-30475

claims against Grimes and Ottesen in their individual capacities on the basis of qualified immunity based on Wilson's failure to adequately allege a constitutional violation. *See Pearson v. Callahan*, 555 U.S. 223, 231 (2009). Because Wilson failed to sufficiently allege that his constitutional rights were violated while he was confined at the East Baton Rouge Parish Prison, his official capacity claims against Grimes and Ottesen also were properly dismissed. *See Connick v. Thompson*, 563 U.S. 51, 60 (2011); *Zarnow v. City of Wichita Falls*, 614 F.3d 161, 166 (5th Cir. 2010). Because Wilson fails to brief whether Singh, Young, and Comeaux were correctly dismissed on the basis of qualified immunity, he has waived his challenge to that determination. *See Am. States Ins. Co. v. Bailey*, 133 F.3d 363, 372 (5th Cir. 1998); *Beasley v. McCotter*, 798 F.2d 116, 118 (5th Cir. 1986).

As the district court observed, Wilson's two counseled complaints were highly detailed. They also were prepared by counsel after Wilson obtained his EBRPP and DOC medical records, and Wilson identifies no additional factual allegations that would cure the pleading deficiencies in his second amended complaint. Accordingly, the district court's denial of Wilson's request to file a third amended complaint was not erroneous. *See Brown v. Taylor*, 911 F.3d 235, 247 (5th Cir. 2018); *Thomas*, 832 F.3d at 590.

AFFIRMED.

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

CORNELIUS LORENZO WILSON

CIVIL ACTION

VERSUS

NO. 15-00680-JWD-RLB

DENNIS GRIMES, ET AL.

RULING

Before the Court are four *Motions* seeking dismissal of Plaintiff's *Second Amended Complaint*.¹ Defendants Dennis Grimes ("Grimes") and Sid J. Gautreaux, III ("Gautreaux") have jointly filed a *Motion to Dismiss Second Amended Complaint*.² Plaintiff Cornelius Lorenzo Wilson ("Wilson" or "Plaintiff") has filed an *Opposition*.³ Defendants Grimes and Gautreaux subsequently filed a *Reply*.⁴ Additionally, Defendants Linda Ottesen ("Ottesen") and the City of Baton Rouge/Parish of East Baton Rouge, on behalf of Prison Medical Services, a division of Emergency Medical Services ("the City/Parish") have filed a *Motion to Dismiss Pursuant to Federal Rules of Civil Procedure Rule 12(b)(6)*.⁵ Wilson has filed an *Opposition*.⁶ Also pending before the Court is a *Motion to Dismiss Pursuant to FRCP 12(b)(6) and FRCP 12(b)(1)* filed by Defendants James Leblanc ("Leblanc"), Robert Tanner ("Tanner"), Timothy Hooper ("Hooper"), Dr. Raman Singh ("Singh"), and Tammyra Young ("Young").⁷ Plaintiff has filed an *Opposition*.⁸ Likewise, Defendant Karen Comeaux ("Comeaux") has filed a *Motion to Dismiss Pursuant*

¹ Docs. 146, 148, 151, and 171.

² Doc. 146.

³ Doc. 150.

⁴ Doc. 164.

⁵ Doc. 148.

⁶ Doc. 153.

⁷ Doc. 151.

⁸ Doc. 167.

to FRCP 12(b)(6) and FRCP 12(b)(1)⁹ that is currently pending before the Court, to which Plaintiff has filed an *Opposition*.¹⁰ The Court's jurisdiction is founded upon 28 U.S.C. § 1331. There is no need for oral argument. For the following reasons, each of the Defendants' *Motions* is **GRANTED**.

I. RELEVANT FACTS AND PROCEDURAL BACKGROUND¹¹

Plaintiff initiated this lawsuit on October 14, 2015 by filing his *pro se Complaint*.¹² Subsequently, Plaintiff's counsel enrolled and filed a *First Amended Complaint*.¹³ Plaintiff's counsel sought leave to amend once more, which was granted, and on July 13, 2017, Plaintiff's *Second Amended Complaint* was filed.¹⁴

During his incarceration as both a pretrial detainee at East Baton Rouge Parish Prison ("EBRPP") and as a convicted inmate with the Louisiana Department of Corrections ("DOC") at numerous public and private facilities, Wilson claims that he received inadequate medical care for untreated and undiagnosed throat cancer that has resulted in the loss of his vocal chords and ongoing pain and suffering. Wilson has asserted various federal and state law claims against twenty named defendants arising out his medical treatment in his original *pro se Complaint*, *First Amended Complaint* filed by counsel, and *Second Amended Complaint* filed by counsel. Of the twenty named defendants, ten have been previously dismissed from this lawsuit. The remaining ten named defendants' *Motions to Dismiss* are currently before the Court.

⁹ Doc. 171.

¹⁰ Doc. 174.

¹¹ The relevant factual background is taken from the allegations in Wilson's *pro se Complaint*, *First Amended Complaint*, and *Second Amended Complaint*.

¹² Doc. 1.

¹³ Doc. 36.

¹⁴ Doc. 138.

A. Plaintiff's Factual Allegations against Grimes and Gautreaux

In February of 2015, while he was being held at EBRPP as a pretrial detainee, Wilson claims he began experiencing problems with his throat.¹⁵ Defendant Gautreaux is the Sheriff of East Baton Rouge Parish¹⁶ and Defendant Grimes is the warden of EBRPP.¹⁷ Plaintiff claims he was a "prominent inmate" at EBRPP known by Defendants Gautreaux and Grimes due to the "high-profile nature" of his case.¹⁸ Wilson makes no other factual allegations regarding Defendant Gautreaux. Wilson alleges that during March 2015, Defendant Grimes was making rounds and Wilson personally spoke with Grimes and told him that "his throat had been sore for more than three weeks, and that he needed medical attention."¹⁹ Wilson further alleges that Defendant Grimes reviewed Wilson's appeal of his medical request denials and Grimes determined that his complaint and medical requests were unfounded.²⁰ Plaintiff asserts that both he and his mother spoke to Grimes about his medical condition in August 2015 during an inmate graduation party and that Grimes "chose to do nothing to facilitate" Wilson receiving medical assistance.²¹

B. Plaintiff's Factual Allegations against Defendants Ottesen and the City/Parish

Defendant Ottesen is the former director and healthcare services administrator of Prison Medical Services.²² The City/Parish is the political entity which funds the

¹⁵ Doc. 138, p. 11, nos. 44-45.

¹⁶ *Id.* at p. 3, no. 11.

¹⁷ *Id.* at p. 4, no. 16.

¹⁸ *Id.* at p. 11, no. 43.

¹⁹ *Id.* at p. 13, no. 56.

²⁰ *Id.* at p. 14, no. 59.

²¹ *Id.* at p. 17, no. 43.

²² *Id.* at p. 6, no. 20.

operations of Prison Medical Services at EBRPP.²³ Wilson claims that Defendant Ottesen also knew who Plaintiff was during his incarceration at EBRPP because of the "high-profile nature" of his case.²⁴ Plaintiff alleges that on April 6, 2015, Defendant Ottesen denied his medical request to go to a hospital.²⁵ He claims that Ottesen was personally aware of his medical condition and failed to "ensure her department could provide constitutionally sound medical care" to him.²⁶ Wilson also seeks to hold the City/Parish responsible for providing inadequate medical care at EBRPP.²⁷

C. Plaintiff's Factual Allegations against Defendants Leblanc, Tanner, Hooper, Singh, and Young

Defendant Leblanc is the Secretary of the Louisiana Department of Public Safety and Corrections ("DOC").²⁸ Defendant Tanner was previously the warden of Ellyn Hunt Correctional Center ("EHCC").²⁹ Defendant Hooper is the current warden of EHCC.³⁰ Plaintiff makes no specific factual allegations regarding Defendants Leblanc, Tanner and Hooper. Defendant Singh is the Medical and Mental Health Director for the DOC.³¹ Defendant Young is a nurse employed by the DOC.³²

Plaintiff alleges that Defendants Singh and Young received an urgent medical transfer request regarding Wilson and "did nothing" to arrange for Wilson to see a specialist.³³ Wilson claims that on November 23, 2015, a nurse practitioner filled out a

²³ *Id.* at p. 5, no. 19.

²⁴ *Id.* at p. 11, no 43.

²⁵ *Id.* at p. 13, no. 57.

²⁶ *Id.* at p. 14, no. 59.

²⁷ *Id.* at p. 5, no. 19.

²⁸ *Id.* at p. 7, no. 25.

²⁹ *Id.* at p. 8, no. 31.

³⁰ *Id.* at p. 9, no. 37.

³¹ *Id.* at p. 7, no. 27.

³² *Id.* at p. 8, no. 29.

³³ *Id.* at p. 20, nos. 97-99.

doctor's call sheet regarding Wilson's ear, nose and throat ("ENT") referral and need for an appointment, and sent it directly to Defendants Singh and Young.³⁴ Plaintiff further contends that Defendants Singh and Young were again notified on December 29, 2015 of Wilson's need for an appointment with an ENT specialist.³⁵

D. Plaintiff's Factual Allegations against Defendant Comeaux

Defendant Comeaux is a nurse at EHCC.³⁶ Wilson asserts that two medical forms were filled out by a nurse practitioner which indicated that Defendant Comeaux would be following up and scheduling an appointment for Wilson.³⁷ He claims that Defendant Comeaux never evaluated Plaintiff's vocal chords or made the necessary appointments.³⁸

E. Plaintiff's Claims

Based upon the foregoing allegations, Wilson brings 42 U.S.C. Section 1983 claims against Defendants Gautreaux, Grimes, Ottesen, Leblanc, Singh, Young, Tanner, Hooper, and Comeaux, in their official and individual capacities, and the City/Parish, for various actions done in violation of the 8th and 14th Amendments to the United States Constitution. Specifically, Wilson alleges the following:

- violation based on the establishment of a system in which inmates with serious medical needs are denied access to appropriate medical care;
- violation based on failure to supervise other defendants to ensure inmates receive appropriate care for serious medical needs;
- violation based on deliberate indifference to Wilson's constitutional right to appropriate medical care; and
- *Monell* violations based on the establishment of policies, patterns, or practices pursuant to which inmates with serious medical conditions are denied access to appropriate medical care.

³⁴ *Id.* at p. 21, no. 104.

³⁵ *Id.* at p. 23, no. 115.

³⁶ *Id.* at p. 9, no. 34.

³⁷ *Id.* at p. 21, nos. 104-105.

³⁸ *Id.* at p. 22, nos. 111-112.

Wilson also asserts corresponding constitutional violations arising under the Louisiana Constitution, Article 1, §§ 2, 3, 7, 9, 20, against all defendants, and state law claims of negligence, and negligent infliction of emotional distress ("NIED") or intentional infliction of emotional distress (IIED) against all defendants, and respondeat superior liability against Defendants Gautreaux and the City/Parish.

The Defendants now seek dismissal with prejudice of Wilson's 42 U.S.C. § 1983 claims.

II. LAW AND ANALYSIS

A. Legal Standards

At the motion to dismiss stage, the Court must accept the well-plead factual allegations in the complaint as true.³⁹ The Court views the complaint in the light most favorable to the plaintiff, resolving all doubts in his favor.⁴⁰ However, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions."⁴¹ The Court will not "strain to find inferences favorable to the plaintiff."⁴² If the facts as plead allow the Court to conclude that plaintiff's claims for relief are "plausible," the motion must be denied.⁴³ To satisfy the plausibility standard, the plaintiff must show "more than a sheer possibility that a defendant has acted unlawfully."⁴⁴ "A claim has facial plausibility when the plaintiff pleads factual content that allows the

³⁹ *In re Katrina Canal Breaches Litigation*, 495 F.3d 191, 205 (5th Cir. 2007).

⁴⁰ *Tanglewood East Homeowners v. Charles-Thomas, Inc.*, 849 F.2d 1568, 1572 (5th Cir. 1988).

⁴¹ *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)(quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

⁴² *Taha v. William Marsh Rice Univ.*, Civ. Action No. H-11-2060, 2012 WL 1576099, *2 (S.D.Tex. May 3, 2012)(quoting *Southland Sec. Corp. v. Inspire Ins. Solutions, Inc.*, 365 F.3d 353 (5th Cir. 2004)).

⁴³ *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

⁴⁴ *Iqbal*, 556 U.S. 678 (citing *Twombly*, 550 U.S. at 556).

court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”⁴⁵

Section 1983 provides that “[e]very person who, under color of any statute, ordinance, custom, or usage ..., subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and [federal] laws, shall be liable to the party injured.”⁴⁶ To state a claim under section 1983, “a plaintiff must (1) allege a violation of rights secured by the Constitution or laws of the United States and (2) demonstrate that the alleged deprivation was committed by a person acting under color of state law.”⁴⁷ “[A]llegations of callous indifference are sufficiently within the ambit of purposeful acts to state a claim of constitutional deprivation under § 1983.”⁴⁸

“Under § 1983, a municipality or local governmental entity ... may be held liable only for acts for which it is actually responsible.”⁴⁹ Consequently, “[t]o establish municipal liability under § 1983, a plaintiff must show the deprivation of a federally protected right caused by action taken pursuant to an official municipal policy.”⁵⁰ To this end, “[a] plaintiff must identify: (1) an official policy (or custom), of which (2) a policymaker can be charged with actual or constructive knowledge, and (3) a constitutional violation whose ‘moving

⁴⁵ *Id.*

⁴⁶ 42 U.S.C. § 1983.

⁴⁷ *Lauderdale v. Texas Dep’t of Criminal Justice*, 512 F.3d 157, 165 (5th Cir.2007) (internal quotation marks and citation omitted).

⁴⁸ *Lopez v. Houston Indep. Sch. Dist.*, 817 F.2d 351, 355 (5th Cir.1987) (overruled on other grounds).

⁴⁹ *Doe ex rel. Doe v. Dallas Indep. Sch. Dist.*, 153 F.3d 211, 215 (5th Cir.1998) (noting that a municipality cannot be held liable under § 1983 on a *respondeat superior* theory); see also *Monell v. Dep’t of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 691 (1978) (“Congress did not intend municipalities to be held liable [for purposes of § 1983] unless action pursuant to official municipal policy of some nature caused a constitutional tort.”).

⁵⁰ *Valle v. City of Houston*, 613 F.3d 536, 541–42 (5th Cir.2010) (citation and internal quotation marks omitted).

force' is that policy or custom."⁵¹ The plaintiff must also "demonstrate that the municipal action was taken with 'deliberate indifference' as to its known or obvious consequences."⁵² Municipalities and other local governmental units "may be sued for constitutional deprivations visited pursuant to governmental 'custom' even though such a custom has not received formal approval through the body's official decisionmaking channels."⁵³

B. Individual Capacity Claims – Qualified Immunity

In response to Wilson's claims brought against the Defendants under Section 1983 in their individual capacities, Defendants Gautreaux, Grimes, Ottesen, Singh, Young, Leblanc, Tanner, Hooper, and Comeaux each assert the defense of qualified immunity. "The doctrine of qualified immunity protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'"⁵⁴ In assessing whether an individual is entitled to qualified immunity, the Court applies a two-part test to determine "(1) whether the defendant's alleged action is a violation of the plaintiff's constitutional rights;" and (2) if so, "whether the defendant's actions were objectively unreasonable in light of the clearly established law at the time of the conduct in question."⁵⁵

Wilson claims that the Defendants were deliberately indifferent to his serious medical needs by denying him reasonable and adequate medical care while Wilson was

⁵¹ *Id.* at 541–42 (citation and internal quotation marks omitted).

⁵² *Bd. of County Comm'r's of Bryan County, Okl. v. Brown*, 520 U.S. 397, 407 (1997).

⁵³ *Monell*, 436 U.S. at 690–91.

⁵⁴ *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)).

⁵⁵ *Deal v. Dept. of Corrections*, Civ. Action No. 16-61, 2016 WL 3580671, *3 (M.D.La. June 28, 2015) (quoting *Freeman v. Gore*, 483 F.3d 404, 410-11 (5th Cir. 2007)).

both a pretrial detainee and convicted prisoner at EBRPP and EHCC. "Pretrial detainees and convicted prisoners ... look to different constitutional provisions for their respective rights to basic needs such as medical care and safety."⁵⁶ While "[t]he constitutional rights of a convicted state prisoner spring from the Eighth Amendment's prohibition on cruel and unusual punishment, and with a relatively limited reach, from substantive due process," the "rights of a pretrial detainee, on the other hand, flow from both the procedural and substantive due process guarantees of the Fourteenth Amendment."⁵⁷ Ultimately, "[t]here is no significant distinction, however, between pretrial detainees and convicted inmates when the denial of medical care is at issue."⁵⁸

Because Wilson has complained of one or more particular acts or omissions by state jail officials, his claims are characterized as episodic acts or omissions.⁵⁹ Thus, whether Wilson was a pretrial detainee or convicted prisoner, the Court analyzes his claim under the deliberate indifference standard.⁶⁰ This Court applies a subjective deliberate

⁵⁶ *Hare v. City of Corinth, Miss.*, 74 F.3d 633, 639 (5th Cir. 1996). See also, *Hanson v. Richardson*, No. 2:06-CV-0178, 2008 WL 818893, *3 (N.D. Tex. Mar. 27, 2008)(“With respect to the differing sources of protection for pretrial detainees and convicted inmates, the Fifth Circuit has recognized that the distinction as to medical care due to a pretrial detainee, as opposed to a convicted inmate, may be a distinction without difference, because if an act or omission violates the Eighth Amendment protection against deliberate indifference to a serious medical need, it will certainly violate a detainee’s Fourteenth Amendment protections.”).

⁵⁷ *Id.* (internal citations omitted).

⁵⁸ *McCarty v. Zapata County*, 243 Fed. Appx. 792, 2007 WL 1191019, *1 (5th Cir. Apr. 20, 2007)(citing *Gibbs v. Grimmette*, 254 F.3d 545, 547 (5th Cir. 2001)).

⁵⁹ *Hare*, 74 F.3d at 645. Wilson also alleges that his treatment as an inmate "represents a pattern, practice, and culture of deliberate indifference." In a condition of confinement claim, a pretrial detainee challenges the jail's general conditions, practices, rules, or restrictions as unconstitutional. *Duvall v. Dall. Cnty., Tex.*, 631 F.3d 203, 207 (5th Cir. 2011). To prevail in a constitutional claim challenging a condition of confinement, the detainee must prove (1) a rule or restriction, or identifiable intended condition or practice, or a jail official's acts or omissions that were "sufficiently extended or pervasive," which was (2) not reasonably related to a legitimate government objective, and which (3) caused the violation of the detainee's constitutional rights. *Id.* Wilson only makes conclusory allegations regarding the practices of state jail officials and fails to point to a specific "rule or restriction, or identifiable intended condition or practice" such that his claims do not satisfy the standard for asserting a condition of confinement claim.

⁶⁰ *McCarty*, 2007 WL 1191019, *1; *Id.* at 647-48.

indifference standard in accordance with Fifth Circuit jurisprudence.⁶¹ According to the Fifth Circuit:

Deliberate indifference is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action. For an official to act with deliberate indifference, the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference. Deliberate indifference requires a showing of more than negligence or even gross negligence. Actions and decisions by officials that are merely inept, erroneous, ineffective, or negligent do not amount to deliberate indifference and do not divest officials of qualified immunity. To satisfy the deliberate indifference prong, a plaintiff usually must demonstrate a pattern of violations and that the inadequacy of the training is obvious and obviously likely to result in a constitutional violation. It may happen that in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, a supervisor might reasonably be found to be deliberately indifferent. . . .

We have stressed that a single incident is usually insufficient to demonstrate deliberate indifference. In *Cousin v. Small*, for example, we held that to succeed on his claim of failure to train or supervise the plaintiff must demonstrate deliberate indifference, which usually requires a plaintiff to demonstrate a *pattern of violations*. Similarly, in *Snyder v. Trepagnier*, we held that “proof of a single violent incident ordinarily is insufficient” for liability. Rather, the plaintiff must demonstrate at least a pattern of *similar incidents in which the citizens were injured*. Moreover, a showing of deliberate indifference requires that the Plaintiffs show that the failure to train reflects a “deliberate” or “conscious” choice to endanger constitutional rights.

Prior indications cannot simply be for any and all “bad” or unwise acts, but rather must point to the specific violation in question. That is, notice of a pattern of *similar* violations is required. While the specificity required should not be exaggerated, our cases require that the prior acts be fairly similar to what ultimately transpired[.]⁶²

⁶¹ *Hare v. City of Corinth, MS*, 74 F.3d 633, 647 (5th Cir. 1996); *Alderson v. Concordia Parish Corr. Facility*, 848 F.3d 415, 419 & n.4 (5th Cir. 2017).

⁶² *Estate of Davis v. City of N. Richland Hills*, 406 F.3d 375, 381-383 (5th Cir. 2005); see also *Floyd v. City of Kenner*, 351 F. App’x 890, 898 (5th Cir. 2009) (“[T]he pleadings must have sufficient precision and factual detail to reveal that more than guesswork is behind the allegation.”).

Further, “[u]nsuccessful medical treatment, acts of negligence, or medical malpractice do not constitute deliberate indifference, nor does a prisoner’s disagreement with his medical treatment, absent exceptional circumstances.”⁶³ A prisoner who alleges that he should have received additional treatment “is a classic example of a matter for medical judgment.”⁶⁴ To establish deliberate indifference a plaintiff must show that an official “refused to treat him, ignored his complaints, intentionally treated him incorrectly, or engaged in any similar conduct that would clearly evince a wanton disregard for any serious medical needs.”⁶⁵ Additionally, a mere delay in providing medical treatment does not amount to a constitutional violation without both deliberate indifference and a resulting harm.⁶⁶

The Defendants contend that construing the allegations in the *Complaints* in the light most favorable to Wilson, Plaintiff has failed to allege sufficient facts to establish that the Defendants conduct violated clearly established constitutional rights regarding Plaintiff’s medical care. For the following reasons, the Court agrees.

a. Defendants Grimes and Gautreaux

Accepting Wilson’s allegations as true, the Court finds that he has failed to state a claim of deliberate indifference to his serious medical needs against Defendants Grimes and Gautreaux. In his *Complaints*, Wilson did not allege that either Grimes or Gautreaux was aware of a substantial risk of harm to him, or that they purposely denied him

⁶³ *Rogers v. Boatright*, 709 F.3d 403, 409-10 (5th Cir. 2013)(quoting *Gobert v. Caldwell*, 463 F.3d 359, 346 (5th Cir. 2006)(quoting *Farmer*, 511 U.S. at 847)).

⁶⁴ *Domino*, 239 F.3d at 756 (quoting *Estelle v. Gamble*, 429 U.S. 97, 107 (1976)).

⁶⁵ *Id.* (quoting *Johnson v. Treen*, 759 F.2d 1236, 1238 (5th Cir. 1985)).

⁶⁶ *Mendoza v. Lynaugh*, 989 F.2d 191, 195 (5th Cir. 1993).

treatment, ignored his medical complaints, intentionally treated him incorrectly, or engaged in any other similar conduct that would evince a wanton disregard for any serious medical need. As to Defendant Gautreaux, Plaintiff only asserts that Gautreaux knew he was "a prominent inmate" due to the "high-profile nature" of his case and as such, Gautreaux was aware of his incarceration at EBRPP.⁶⁷ Wilson makes no other factual allegations regarding Defendant Gautreaux, any personal interaction with him, or any direct involvement of Gautreaux in Wilson's medical treatment. Wilson's conclusory allegations regarding Gautreaux's knowledge and involvement in Wilson's treatment due to his supervisory capacity at EBRPP are not sufficient to satisfy the high burden required for a deliberate indifference claim.

According to Wilson's allegations, on an unknown date in March 2015, Defendant Grimes was making rounds in the prison and Plaintiff personally told Grimes of his need for medical attention for his sore throat.⁶⁸ Wilson also admits that he was seen by Dr. Whitfield on March 18, 2015, by Dr. Stuart on March 21, 2015, by Nurse Bradley on April 21, 2015, by Dr. Bridges on April 24, 2015, by Nurse Raine on May 7, 2015, and by the same nurses and doctors on several later dates.⁶⁹ Wilson also claims that he appealed a previously denied medical request and on April 21, 2015, Defendant Grimes determined that Wilson's complaint and medical requests were unfounded.⁷⁰ Not only does Wilson fail to provide any support for the allegation that Grimes personally denied his request, but he admits that he was examined by medical personnel on several occasions after this date. Plaintiff claims that he and his mother both spoke with Defendant Grimes in August

⁶⁷ Doc. 138, p. 11, no. 43.

⁶⁸ *Id.* at p. 13, no. 56.

⁶⁹ *Id.* at pp. 12-16, nos. 51-74.

⁷⁰ *Id.* at p. 14, no. 59.

2015 about Wilson's medical condition and Defendant Grimes did nothing to facilitate Wilson receiving treatment.⁷¹ However, Wilson then admits that he was examined by medical personnel on August 13, 2015, August 14, 2015, August 16, 2015, and August 31, 2015.⁷² None of Plaintiff's allegations support the assertion that either Defendant Gautreaux or Grimes "refused to treat him, ignored his complaints, intentionally treated him incorrectly, or engaged in any similar conduct that would clearly evince a wanton disregard for any serious medical needs."

For the foregoing reasons, the Court finds that Wilson has failed to allege facts showing that Defendants Gautreaux and Grimes acted with deliberate indifference toward his serious medical needs in violation of the Eighth or Fourteenth Amendments. Because Wilson has not satisfied the first prong of the qualified immunity analysis, both Defendants Grimes and Gautreaux are entitled to have the deliberate indifference claims against them dismissed based on qualified immunity, and each of their *Motions* shall be granted on this ground.

b. Defendant Ottesen

According to Wilson's allegations, Defendant Ottesen was also aware of Wilson's presence at EBRPP due to the "high-profile nature" of his case.⁷³ This is a conclusory statement of which Plaintiff provides no actual support in order to prove that Defendant Ottesen actual knew or knew of Wilson while he was incarcerated at EBRPP.

Wilson further claims that Defendant Ottesen answered his April 2015 complaint regarding his medical care by responding that his "grievance was unfounded and that his

⁷¹ *Id.* at p. 17, nos. 79-81.

⁷² *Id.* at pp. 17-18, nos. 83-88.

⁷³ *Id.* at p. 11, no. 43.

condition did not require hospital treatment.⁷⁴ He claims that from this point on, Defendant Ottesen was aware of Wilson's medical condition.⁷⁵ This constitutes the entirety of the factual allegations against Ottesen in Wilson's *Second Amended Complaint*. Any further mention of Defendant Ottesen is contained in conclusory statements regarding the Defendant's liability without any factual support. As detailed above, Plaintiff received ample medical treatment after his April 2015 complaint to prison officials. Wilson's allegations do not support a finding that Defendant Ottesen was aware of an excessive risk to Wilson's health or safety, or that she chose to disregard such risk. To the contrary, Wilson's allegations suggest that Defendant Ottesen used her professional judgment in order to make a determination regarding an inmate's medical needs based on the information she possessed at the time. For these reasons, Wilson's allegations fail to overcome Defendant Ottesen's qualified immunity and her *Motion* shall be granted on this ground.

c. Defendants Leblanc, Tanner, Hooper, Singh, Young, and Comeaux

Defendants Leblanc, Tanner, and Hooper together contend that they had no personal involvement or awareness of Wilson's specific medical issues, that they are not medical professionals and rely on the judgement of DOC medical professionals in the provision of inmate care, and that Wilson's allegations fail to evidence that these defendants set out unconstitutional policies or procedures that would lead to the inadequate provision of medical care to inmates.⁷⁶ The Court agrees. Plaintiff has not made a single assertion of personal interaction with Defendant Leblanc, Tanner, Hooper,

⁷⁴ *Id.* at p. 13, no. 57.

⁷⁵ *Id.* at p. 14, no. 58.

⁷⁶ Doc. 151-1, p. 14.

He has not alleged that any of these three Defendants had personal knowledge of his medical condition. The only allegations made against these Defendants are conclusory allegations regarding their supervisory roles within the DOC. Further, Plaintiff contradicts these statements when he details the numerous doctor's examinations that he received and the ultimately life-saving surgery he underwent while under the care of the DOC. Accordingly, Defendants *Motion* shall be granted on this ground.

As to Defendants Singh, Young, and Comeaux, Plaintiff has again failed to establish that these Defendants violated a clearly established constitutional right of the defendant or if they did, that such a violation was objectively contrary to clearly established law. Wilson alleges that Defendants Singh and Young received medical requests filled out on Wilson's behalf from November 6, 2015 and November 23, 2015 but did nothing to arrange a doctor's visit for him.⁷⁷ He also claims that Defendant Comeaux also received a similar request on November 23, 2015 and that she "failed to follow through" and arrange for Wilson to be seen by a specialist.⁷⁸ However, Wilson admits that approximately two months after making these requests, he was examined by a specialist.⁷⁹ Wilson furthers details that he was seen by an ENT specialist on February 29, 2016 and about two weeks later, from March 15-16, 2016, he was admitted to University Hospital for a panendoscopy and biopsy of the tumor on his vocal chord.⁸⁰ On March 23, 2016, just a week later, Wilson returned to the hospital for a follow-up appointment and the following week, on March 31, 2016, Wilson underwent life-saving

⁷⁷ Doc. 138, pp. 20-21, nos. 98-106.

⁷⁸ *Id.* at p. 21, nos. 105-106.

⁷⁹ *Id.* at p. 23, no. 117.

⁸⁰ *Id.* at p. 25, nos. 124-26.

surgery.⁸¹ As previously explained, a mere delay in providing medical treatment does not amount to a constitutional violation. Wilson has not alleged sufficient facts to show that these Defendants purposefully delayed his treatment, ignored his complaints, or did anything else that would evince a wanton disregard for his serious medical needs. His own allegations detail how swiftly Wilson received treatment after the discovery of his tumor. Accordingly, Defendants' *Motions* shall be granted on this ground.

C. Official Capacity Claims

A suit against a municipal government official in his official capacity is equivalent to a suit against the municipality of which he is an agent.⁸² To determine whether a public official is liable in his official capacity, the court must consider whether the municipality is liable under Section 1983.⁸³

a. Sovereign Immunity – Defendants Leblanc, Tanner, Hooper, Singh, Young, and Comeaux

To the extent that Wilson is asserting a monetary claim against Defendants Leblanc, Tanner, Hooper, Singh, Young, and Comeaux in their official capacities, the Defendants assert the defense of sovereign immunity under the Eleventh Amendment. These Defendants seek dismissal under FRCP Rule 12(b)(1). Wilson fails to address the Defendants sovereign immunity claims in his *Oppositions*.

"A motion to dismiss under Rule 12(b)(1) is analyzed under the same standard as a motion to dismiss under Rule 12(b)(6)." ⁸⁴ Therefore, the Court must accept all well-

⁸¹ *Id.* at p. 25, nos. 127-28.

⁸² *Burge v. Parish of St. Tammany*, 187 F.3d 452, 466 (5th Cir.1999); see *Monell*, 436 U.S. 658, 690 n. 55 (official capacity suits "generally represent only another way of pleading an action against an entity of which an officer is an agent").

⁸³ *Burge*, 187 F.3d at 470.

⁸⁴ *Wagster v. Gautreaux*, 2014 WL 3546997, at *1 (M.D.La. July 16, 2014)(quoting *Hall v. Louisiana, et al.*, 974 F.Supp.2d 978, 985 (M.D.La. September 30, 2013)(citing *Benton v. U.S.*, 960 F.2d 19, 21 (5th Cir.1992))).

pledged facts in the complaint as true and view them in the light most favorable to the plaintiff.⁸⁵ Ultimately, “[t]he burden of proof for a Rule 12(b)(1) motion to dismiss is on the party asserting jurisdiction.”⁸⁶ Accordingly, the plaintiff bears the burden of proof that jurisdiction exists.

Wilson has asserted Section 1983 and state law claims against these Defendants as DOC employees in their official capacities. As DOC employees, Defendants Leblanc, Tanner, Hooper, Singh, Young, and Comeaux are state officials. Because of sovereign immunity, Section 1983 claims may only be asserted against persons and “neither a State nor its officials acting in their official capacities are ‘persons’ under § 1983.”⁸⁷ State employees and officials acting in their official capacities may not be sued for monetary damages under § 1983, but they may be sued for prospective relief.⁸⁸ Prospective relief, under the Eleventh Amendment, is limited to situations where the claimant has a protected interest.⁸⁹ Protected interests are those within the Fourteenth Amendment’s language of “liberty” and “property.”⁹⁰

Accordingly, to the extent Plaintiff seeks monetary relief from Defendants Leblanc, Tanner, Hooper, Singh, Young, and Comeaux in their official capacities under Section 1983 and in his state law claims, these claims are barred by the Eleventh Amendment and shall be dismissed without prejudice.⁹¹

⁸⁵ *Lewis v. Brown*, 2015 WL 803124, at *3 (M.D.La. Feb. 25, 2015).

⁸⁶ *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir.2001) (citations omitted).

⁸⁷ *Will v. Michigan Dep’t. of State Police*, 491 U.S. 58, 71, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989).

⁸⁸ See *Brennan v. Stewart*, 834 F.2d 1248, 1253 (5th Cir.1988); See also *Ex Parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908).

⁸⁹ *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972).

⁹⁰ *Id.* at 569–70.

⁹¹ Because sovereign immunity deprives the court of jurisdiction, claims barred by sovereign immunity can be dismissed only under Rule 12(b)(1) and without prejudice. *Warnock v. Pecos County, Tex.*, 88 F.3d 341, 343 (5th Cir.1996).

b. Respondeat Superior – Defendants Gautreaux and Grimes

There is no dispute that Plaintiff can bring a claim against Sheriff Gautreaux and Warden Grimes in their official capacities. Sheriff Gautreaux is considered a "final policymaker" under Louisiana law and may be sued in his official capacity.⁹² Warden Grimes is considered a "final policymaker" for the EBR Prison.⁹³ Accordingly, Plaintiff's respective claims against these individuals in their official capacities are really claims against the East Baton Rouge Parish Sheriff's Office ("EBRPSO") and the EBRPP.

Wilson's *Second Amended Complaint* alleges that Defendants Gautreaux and Grimes are vicariously liable for the acts complained of within the *Second Amended Complaint*.⁹⁴ Under § 1983, "supervisory officials are not liable for the actions of subordinates on any theory of vicarious liability."⁹⁵ "Supervisory officials may be held liable only if: (i) they affirmatively participate in acts that cause constitutional deprivation; or (ii) implement unconstitutional policies that causally result in plaintiff's injury."⁹⁶ Accordingly, Plaintiff's claims against Defendants Gautreaux and Grimes, and therefore the EBRPSO and EBRPP, under the doctrine of *respondeat superior* pursuant to Section 1983 must be dismissed.

⁹² See *Craig v. St. Martin Parish Sheriff*, 861 F.Supp. 1290, 1301 (W.D. La.1994); La. Const. art. 5, § 27 ("[The sheriff] shall be the chief law enforcement officer in the parish.").

⁹³ See *Parker v. Gautreaux*, No. 12-00605, 2014 WL 4185296, at *4 (M.D. La. Aug. 21, 2014).

⁹⁴ Doc. 138, p. 4, no. 15 and p. 5, no. 18.

⁹⁵ *Thompkins v. Belt*, 828 F.2d 298, 303 (5th Cir.1987).

⁹⁶ *Baker v. Putnal*, 75 F.3d 190, 199 (5th Cir.1996).

c. *Monell* violations – Defendants Gautreaux, the City/Parish, Leblanc, Hooper, Tanner and Singh⁹⁷

Plaintiff asserts a claim for *Monell* violations based on the establishment of policies, patterns, or practices pursuant to which inmates with serious medical conditions are denied access to appropriate medical care against Defendants Gautreaux, Leblanc, Hooper, Tanner, and Singh.

Named after the famed case that first recognized it, *Monell*, 436 U.S. at 694, *Monell* liability requires proof of four elements: (1) a policymaker; (2) an official policy; (3) a constitutional violation;⁹⁸ and (4) a violation of that constitutional right whose “moving force” is “the policy or custom.”⁹⁹ Stated differently, “[a] plaintiff must point to a persistent and widespread practice[] of municipal [or state] officials, the duration and frequency of which indicate that policymakers (1) had actual or constructive knowledge of the conduct, and (2) failed to correct it due to their deliberate indifference”; as such, knowledge and indifference, factors incorporating subjective and objective components, are required, as is an actual threshold constitutional violation.¹⁰⁰

⁹⁷ The Court notes that Defendants Leblanc, Hooper, Tanner, and Singh have been sued in their official capacity as state actors and therefore *Monell* is inapplicable to these parties. See *Cain v. City of New Orleans*, 2017 WL 467685 at *17 (E.D. La. Feb. 3, 2017)(citing *Rounds v. Clements*, 495 Fed.Appx. 938, 941 (10th Cir. 2012) (“[T]he ‘policy or custom’ standard ... [is] a liability standard for suits against municipalities—entities not immune from suit under the Eleventh Amendment—and it has no applicability to state officers who are immune from suit for damages but susceptible to suit under *Ex parte Young* for injunctive relief.”)). The Court has included them in the *Monell* analysis out of an abundance of caution because Plaintiff’s claim has included them in his *Monell* claim.

⁹⁸ Under *Monell*, liability may be shown in four separate ways. See, e.g., *Castanza v. Town of Brookhaven*, 700 F.Supp.2d 277, 287 (E.D. N.Y. 2010).

⁹⁹ *Piotrowski v. City of Houston*, 237 F.3d 567, 578 (5th Cir. 2001) (construing (3) and (4) as one element).

¹⁰⁰ *Owens v. Balt. City State's Attys. Office*, 767 F.3d 379, 402–03 (4th Cir. 2014); see also, e.g., *Bd. of Cnty. Comm'r's v. Brown*, 520 U.S. 397, 404, 117 S. Ct. 1382, 1388, 137 L.Ed. 2d 626 (1997) (“The plaintiff must also demonstrate that, through its deliberate conduct, the municipality was the moving force behind the injury alleged. That is, a plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights.” (internal quotation marks omitted)); *Thomas v. City of Chattanooga*, 398 F.3d 426, 429 (6th Cir. 2005) (enumerating the pertinent elements).

Monell "presupposes a conscious adoption of a course of action 'from among various alternatives,'"¹⁰¹ and the practice that it and its progeny forbid must be "so persistent and widespread and so permanent and well settled as to constitute a custom or usage with *the force of law*."¹⁰² It is, as the Fifth Circuit has emphasized, "difficult to prove,"¹⁰³ though some circuits permit trial courts to infer the requisite knowledge and indifference from a proven record of "widespread or flagrant violations."¹⁰⁴

Wilson alleges that the Defendants established and maintained policies, patterns and/or practices that that they knew would deprive pre-trial detainees and DOC inmates of their constitutional rights while housed at EBRPP and EHCC.¹⁰⁵ Wilson addresses his *Monell* claim against the Defendants together and instead of pointing to a specific policy that serves as the basis for his claim against each Defendant, he lists fifteen "written and unwritten policies, customs, patterns, and practices."¹⁰⁶ Each and every one of these involves the inadequate provision of medical care to inmates. Wilson has failed to connect the dots between each Defendant and a single one of these enumerated policies. He has failed to allege that any of the Defendants adopted or maintained these policies with objective deliberate indifference to his constitutional rights. Wilson does not allege any facts that evince any of the Defendants' actual or constructive knowledge of policies or customs which would deprive inmates of constitutionally sufficient medical care. Wilson's conclusory allegations that the Defendants are somehow liable solely due to

¹⁰¹ *Shadrick*, 805 F.3d at 752.

¹⁰² *Moody v. City of Newport News*, 93 F. Supp. 3d 516, 542 (E.D. Va. 2015) (emphasis added).

¹⁰³ *Anderson v. Marshall Cnty., Miss.*, No. 15-60051, 2016 U.S. App. LEXIS 621, at *12–13, 2016 WL 143303, at *4 (5th Cir. Jan. 12, 2016).

¹⁰⁴ *Owens*, 767 F.3d at 403 (internal quotation marks omitted).

¹⁰⁵ Doc. 138, p. 38, no. 192.

¹⁰⁶ *Id.* at p. 39, no. 193.

their supervisory capacity are not sufficient. Accordingly, the Defendants *Motions* shall be granted on this ground.

d. Violation based on the establishment of a system in which inmates with serious medical needs are denied access to appropriate medical care¹⁰⁷ – Defendants Gautreaux, the City/Parish, Leblanc, and Ottesen¹⁰⁸

Wilson alleges that Defendants Gautreaux, Ottesen, and Leblanc all created contractual relationships "that resulted in inadequate, insufficient and underfunded health care services that they knew would result in deprivation of adequate medical care for prisoners with serious medical conditions."¹⁰⁹ As previously explained, Under Section 1983, "[a] plaintiff must identify: (1) an official policy (or custom), of which (2) a policymaker can be charged with actual or constructive knowledge, and (3) a constitutional violation whose 'moving force' is that policy or custom."¹¹⁰ The plaintiff must also "demonstrate that the municipal action was taken with 'deliberate indifference' as to its known or obvious consequences."¹¹¹ Plaintiff has again stated his claim by making conclusory allegations regarding Defendants knowledge of alleged deprivations without providing factual support that would evidence such knowledge. Furthermore, even if Plaintiff could prove the Defendants constructive knowledge, he failed to allege a single fact suggesting that such action was taken with deliberate indifference to its known or obvious consequences. For these reasons, Defendants *Motions* shall be granted.

¹⁰⁷ The Court notes that essentially, this is another *Monell* claim but, in an abundance of caution, it has analyzed Plaintiff's claims in the manner in which they are set forth in his *Second Amended Complaint* although the analyses for several claims mirror each other.

¹⁰⁸ Defendant Ottesen also asserts a prematurity defense to the Section 1983 claims brought against her as falling with the ambit of the Louisiana Medical Malpractice Act. However, the Court need not address this issue as Plaintiff's claims against Defendant Ottesen shall be dismissed on other grounds.

¹⁰⁹ Doc. 138, p. 34, nos. 172-173.

¹¹⁰ *Id.* at 541-42 (citation and internal quotation marks omitted).

¹¹¹ *Bd. of County Comm'r's of Bryan County, Okl. v. Brown*, 520 U.S. 397, 407 (1997).

e. Failure to Train or Supervise – Defendants Gautreaux, Grimes, Ottesen, Leblanc, Singh, and Tanner

Wilson alleges that Defendants Gautreaux, Grimes, and Ottesen failed to supervise their subordinates "to ensure that these subordinates do not ignore inmates requests for medical treatment, fail to refer inmates needing treatment to appropriate health care professionals, and/or fail to properly monitor inmates' whose medical conditions do not improve and/or worsen while incarcerated in their custody."¹¹² He also asserts that Defendants Leblanc, Singh, and Tanner "failed to supervise their subordinates . . . Mr. Wilson was directly harmed by these Defendants' failures to supervise their medical employees whose actions resulted in untimely access to specialty care at facilities outside of DOC. These Defendants' failures resulted in Mr. Wilson's delayed cancer diagnosis, his total laryngectomy and other extreme physical, mental, and emotional harm he experienced due to his untreated medical condition."¹¹³

For a § 1983 claim for failure to supervise or train to survive dismissal, plaintiffs must demonstrate that "(1) the supervisor either failed to supervise or train the subordinate official; (2) a causal link exists between the failure to train or supervise and the violation of the plaintiff's rights; and (3) the failure to train or supervise amounts to deliberate indifference."¹¹⁴ "[W]hen city policymakers are on actual or constructive notice that a particular omission in their training program causes city employees to violate citizens' constitutional rights, the city may be deemed deliberately indifferent if the policymakers choose to retain that program."¹¹⁵ "A less stringent standard of fault for a

¹¹² Doc. 138, p. 36, no. 180.

¹¹³ *Id.* at p. 36, no. 181.

¹¹⁴ *Smith v. Brenoettsy*, 158 F.3d 908, 911–12 (5th Cir.1998).

¹¹⁵ *Connick v. Thompson*, 131 S.Ct. 1350, 1359–60 (2011).

failure-to-train claim would result in *de facto respondeat superior* liability on municipalities," which is not allowed pursuant to Section 1983.¹¹⁶

To establish deliberate indifference in this context, "a plaintiff usually must demonstrate a pattern of violations and that the inadequacy of the training is obvious and obviously likely to result in a constitutional violation."¹¹⁷ "[F]or liability to attach based on an 'inadequate training' claim, a plaintiff must allege with specificity how a particular training program is defective."¹¹⁸ "Proof of a single incident generally will not support a finding of inadequate training as a matter of custom or policy."¹¹⁹

Plaintiff has failed to make sufficient, non-conclusory allegations indicating that the Defendants failed to supervise or train the subordinate official; a causal link exists between the failure to train or supervise and the violation of the plaintiff's rights; and their failure to train or supervise amounts to deliberate indifference.¹²⁰ At most, Plaintiff has alleged that certain prison officials were too slow in responding to his requests for medical treatment and that he disagreed with the treatment that he received. These facts, assumed to be true for the purposes of this motion, do not establish that the officers were trained improperly or supervised improperly with regard to medical treatment. As to Wilson's allegations regarding his specific medical treatment, if taken as true, the Court has already established that "[p]roof of a single incident generally will not support a finding

¹¹⁶ *Id.* (citations omitted).

¹¹⁷ *Cousin v. Small*, 325 F.3d 627, 637 (5th Cir.2003) (internal quotation omitted); *see also Languirand v. Hayden*, 717 F.2d 220, 227-28 (5th Cir.1983) ("[A] municipality is not liable under section 1983 for the negligence or gross negligence of its subordinate officials, including its chief of police, in failing to train the particular officer in question, in the absence of evidence at least of a pattern of similar incidents in which citizens were injured or endangered by intentional or negligent police misconduct and/or that serious incompetence or misbehavior was general or widespread throughout the police force.").

¹¹⁸ *Roberts v. City of Shreveport*, 397 F.3d 287, 293 (5th Cir.2005).

¹¹⁹ *Forgan v. Howard Cnty., Tex.*, 494 F.3d 518, 522 (5th Cir.2007).

¹²⁰ *Smith*, 158 F.3d at 911-12.

of inadequate training as a matter of custom or policy."¹²¹ To survive a motion to dismiss, Plaintiff must allege a pattern of violations and that the inadequacy of the training is obvious and obviously likely to result in a constitutional violation. Plaintiff has not done so.

Based on the foregoing, Plaintiff has failed to plead sufficient facts to support a 42 U.S.C. § 1983 claim alleging an Eighth Amendment violation against Defendants Gautreaux, Grimes, Ottesen, Leblanc, Singh, and Tanner in their official capacities.

D. Leave to Amend

In each of his *Oppositions*, Wilson seeks leave to remedy the pleading deficiencies as to the Defendants. A district court has discretion to grant a motion to amend, and leave to amend shall be granted when justice so requires.¹²² However, a district court does not abuse its discretion when it denies leave to amend because the amendment would be futile.¹²³ Wilson has already been permitted file an *Amended Complaint* and *Second Amended Complaint*, which were both prepared by counsel.¹²⁴ The 43 page *Second Amended Complaint* details with great specificity the history of Wilson's medical care from the time he was a pretrial detainee and began feeling sick through the time that he received cancer treatment, recovered in the hospital, and later returned to EHCC. Therefore, the Court finds that permitting Wilson another opportunity to amend his

¹²¹ *Forgan v. Howard Cnty., Tex.*, 494 F.3d 518, 522 (5th Cir.2007).

¹²² Fed. R. Civ. P. 15(a)(2).

¹²³ *Stripling v. Jordan Production Co., LLC*, 234 F.3d 863, 872-73 (5th Cir. 2000).

¹²⁴ Doc. 36 and Doc. 138.

Complaint to remedy the pleading deficiencies at this stage would be futile.¹²⁵ Accordingly, Wilson's request to amend his *Complaint* is hereby denied.

E. Supplemental Jurisdiction over Remaining State Law Claims

A district court may decline to exercise supplemental jurisdiction over the plaintiff's state law claims if they raise novel or complex issues of state law, if the claims substantially predominate over the claim over which the district court has original jurisdiction, if the district court has dismissed all claims over which it had original jurisdiction, or for other compelling reasons.¹²⁶ In the instant case, the Court has dismissed all claims over which it had original jurisdiction as to Defendants Gautreaux, Grimes, Ottesen, Leblanc, Tanner, Hooper, Singh, Young, Comeaux, and the City/Parish. Therefore, the Court declines to exercise supplemental jurisdiction over Plaintiff's remaining state law claims of negligence, negligent infliction of emotional distress ("NIED") or intentional infliction of emotional distress (IIED) and respondeat superior liability. These claims shall be dismissed without prejudice.

IV. CONCLUSION

For the foregoing reasons, Defendants Dennis Grimes and Sid J. Gautreaux, III's *Motion to Dismiss Second Amended Complaint*¹²⁷ is hereby **GRANTED**. Additionally, Defendants Linda Ottesen and the City of Baton Rouge/Parish of East Baton Rouge, on behalf of Prison Medical Services, a division of Emergency Medical Services' *Motion to Dismiss Pursuant to Federal Rules of Civil Procedure Rule 12(b)(6)*¹²⁸ hereby **GRANTED**.

¹²⁵ *Marucci Sports, L.L.C. v. National Collegiate Athletic Ass'n*, 751 F.3d 368, 378 (5th Cir. 2014) ("Denying a motion to amend is not an abuse of discretion if allowing an amendment would be futile.") (quoting *Briggs v. Miss.*, 331 F.3d 499, 508 (5th Cir. 2003)).

¹²⁶ 28 U.S.C. § 1337.

¹²⁷ Doc. 146.

¹²⁸ Doc. 148.

Defendants James Leblanc, Robert Tanner, Timothy Hooper, Dr. Raman Singh, and Tamyra Young's *Motion to Dismiss Pursuant to FRCP 12(b)(6) and FRCP 12(b)(1)*¹²⁹ is hereby **GRANTED**. Further, Defendant Karen Comeaux's *Motion to Dismiss Pursuant to FRCP 12(b)(6) and FRCP 12(b)(1)*¹³⁰ is hereby **GRANTED**.

It is hereby ordered that Plaintiff Cornelius Lorenzo Wilson's 42 U.S.C. § 1983 deliberate indifference claims brought pursuant to the Eighth and Fourteenth Amendments are hereby **dismissed with prejudice** because each of the Defendants is entitled to qualified immunity.

It is further ordered that Plaintiff Cornelius Lorenzo Wilson's claims against Defendants Leblanc, Tanner, Hooper, Singh, Young, and Comeaux in their official capacities are hereby **dismissed without prejudice** because each of the Defendants is entitled to sovereign immunity.

It is further ordered that Plaintiff Cornelius Lorenzo Wilson's remaining 42 U.S.C. § 1983 for *respondeat superior* liability against Defendants Gautreaux and Grimes are hereby **dismissed with prejudice** for failure to state a claim.

It is further ordered that Plaintiff Cornelius Lorenzo Wilson's remaining 42 U.S.C. § 1983 for *Monell* violations against Defendants Gautreaux, the City/Parish, Leblanc, Hooper, Tanner and Singh are hereby **dismissed with prejudice** for failure to state a claim.

It is further ordered that Plaintiff Cornelius Lorenzo Wilson's remaining 42 U.S.C. § 1983 for violation based on the establishment of a system in which inmates with serious medical needs are denied access to appropriate medical care against Defendants

¹²⁹ Doc. 151.

¹³⁰ Doc. 171.

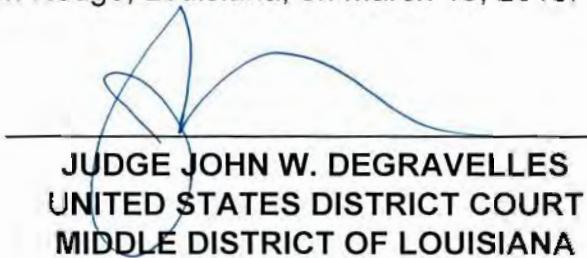
Gautreaux, the City/Parish, Leblanc, and Ottesen are hereby **dismissed with prejudice** for failure to state a claim.

It is further ordered that Plaintiff Cornelius Lorenzo Wilson's remaining 42 U.S.C. § 1983 for failure to train or supervise against Defendants Gautreaux, Grimes, Ottesen, Leblanc, Singh, and Tanner are hereby **dismissed with prejudice** for failure to state a claim.

It is further ordered that Plaintiff Cornelius Lorenzo Wilson's state law state law claims of negligence, negligent infliction of emotional distress ("NIED") or intentional infliction of emotional distress (IIED) and respondeat superior liability are hereby **dismissed without prejudice**.

It is further ordered that Plaintiff Cornelius Lorenzo Wilson's third request for leave to amend his *Complaint*, is hereby **DENIED**.

Signed in Baton Rouge, Louisiana, on March 19, 2018.



JUDGE JOHN W. DEGRAVELLES
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CORNELIUS LORENZO WILSON,	*	CIVIL ACTION
	*	
VERSUS	*	NO. 15-680-JJB-RLB
	*	
DENNIS GRIMES, ET AL.	*	JUDGE JAMES J. BRADY
	*	
	*	MAGISTRATE JUDGE
	*	RICHARD L. BOURGEOIS, JR.

SECOND AMENDED COMPLAINT

NATURE OF THE CASE

1. While incarcerated at the East Baton Rouge Parish Prison (“EBRPP”), Mr. Cornelius Wilson, a vocal performer, began suffering from hoarseness, throat pain, a productive cough and difficulty swallowing in February of 2015. Defendants largely ignored Mr. Wilson’s worsening symptoms, never deviating from their unsuccessful treatment plan of cough drops, expectorants and antibiotics.
2. Mr. Wilson’s medical condition never improved, and even after a Parish Prison doctor referred him to see an Ear Nose and Throat (ENT) Specialist to rule out the possibility of cancer or other medical complications, it took the DOC Defendants an additional six months to schedule Mr. Wilson’s visit with an ENT.
3. By the time he made it to a specialist – after over a year had passed since his first complaint – Mr. Wilson’s undiagnosed throat cancer had advanced to the point where his vocal chords needed to be removed. Such an unreasonable and unnecessary delay on the Defendants’ part resulted in permanent damage to Mr. Wilson’s throat and voice, as well as more than a year’s worth of pain, suffering, and pleading for medical treatment.
4. Instead of providing adequate, appropriate, and necessary care and treatment to

Mr. Wilson, the Defendants failed in their professional and legal obligations. Mr. Wilson was treated in a callous, harsh and indifferent manner by the Defendants.

5. Had the Parish Prison Defendants provided a constitutional system of medical care to inmates, Mr. Wilson would have received a referral to and treatment by an ENT specialist sooner. What is more, had the DOC Defendants not repeatedly ignored Mr. Wilson's complaints and the clear medical instructions to send him to an ENT specialist, his cancer would not have progressed untreated and it would not have required such invasive treatment – removal of his vocal cords – to combat his throat cancer. Had the DOC Defendants acted timely, and not been deliberately indifferent to Mr. Wilson's medical needs, he would likely still have his vocal chords and would not have a permanent hole in his throat.

6. Because of the Defendants' delays, Mr. Wilson remains in recovery and is learning to live with his injuries. As a vocal performer, he has lost a significant part of his identity.

7. Mr. Wilson's treatment during his yearlong attempt to obtain treatment (both pre and post diagnosis) represents a pattern, practice, and culture of deliberate indifference and culpable negligence towards inmates' in the custody of the EBRPP, and DOC inmates housed in private and public facilities.

8. By this Amended Complaint, Mr. Wilson seeks a declaratory, injunctive, compensatory and punitive relief, costs and attorney's fees, and any other relief to which he may by law or equity be entitled.

JURISDICTION AND VENUE

9. This is an action for injunctive, declaratory and monetary relief is brought

pursuant to 42 U.S.C. § 1983, pursuant to the First, Eighth and Fourteenth Amendment rights of the United States Constitution, Jurisdiction lies under 28 U.S.C. §§ 1331, 1343(a)(3) and (4) and 2201. Plaintiff asserts state law claims, and thus invokes supplemental jurisdiction of all state law claims under 28 U.S.C. § 1367. Venue for this action lies in this Court under 28 U.S.C. § 1391(b)(1)-(2) because all the Defendants reside in Louisiana and a substantial part of the events and omissions giving rise to the claims occurred in the Middle District of Louisiana.

PARTIES

Plaintiff:

10. **Cornelius Lorenzo Wilson** is a person of full age of majority who is currently incarcerated at Elayn Hunt Correctional Center in St. Gabriel, Louisiana.

Defendants:

11. **Defendant SHERIFF SID J. GAUTREAUX, III**, is the Sheriff of East Baton Rouge Parish, which is responsible for staffing and running the East Baton Rouge Parish Prison (“EBRPP”).

12. Any liability referred to as the East Baton Rouge Parish Prison implies Defendant **Gautreaux**, Sheriff of East Baton Rouge Parish Prison and Defendant Dennis **Grimes**.

13. Defendant **Gautreaux** is an adult citizen in the State of Louisiana and domiciled in the Middle District of Louisiana.

14. By law, Defendant **Gautreaux** was responsible for protecting the constitutional and statutory rights of all persons held in the EBRPP’s custody when Mr. Wilson was incarcerated there. He was responsible for the hiring, training, supervision, administration, discipline, and control of all staff working in the EBRPP. He was also

responsible for the supervision, administration, policies, practices, customs, and operations of EBRSO and its correctional facilities. Defendant **Gautreaux** was and continues to be a final policy maker in EBRPP regarding the jail's management, including its general operations and the provision of medical care to inmates.

15. Defendant **Gautreaux's** actions and omissions during Plaintiff Wilson's incarceration demonstrated deliberate indifference to his basic rights. He also implemented constitutionally deficient medical policies for inmates – including Plaintiff Wilson – that directly led to constitutional and state law violations Plaintiff Wilson experienced. Upon information and belief, at all times relevant to the allegations presented in the instant action, Defendant **Gautreaux** oversaw and was personally involved in the decision-making process for providing appropriate medical care to EBRPP inmates, including Mr. Wilson. Defendant **Gautreaux** is liable both directly and vicariously for the actions complained of herein. He is sued in his official and individual capacities as the Sheriff of the EBRSO.

16. Defendant **Lt. Colonel DENNIS GRIMES**, is a high-ranking officer in the EBRSO and serves as the Warden of the EBRPP. He is an adult citizen in the State of Louisiana and domiciled in the Middle District of Louisiana.

17. By law, Defendant **Grimes** was responsible for protecting the constitutional and statutory rights of all persons held in EBRPP's custody when Plaintiff Wilson was incarcerated there. He was responsible for the hiring, training, supervision, administration, discipline, and control of all staff working in the EBRPP. He was also responsible for the supervision, administration, policies, practices, customs, and operations of EBRPP. Defendant **Grimes'** responsibilities also included ensuring that

staff and employees, including himself, followed proper procedures with respect to the inmates in their care, custody, and control.

18. Upon information and belief, at all times relevant to the allegations presented in the instant action, Defendant **Grimes** oversaw and was personally involved in the decision-making process for providing appropriate medical care to EBRPP inmates, including Mr. Wilson. Defendant **Grimes**' actions and omissions resulted in the myriad of constitutional and state law violations of which Plaintiff Wilson now complains. During all moments pertinent to this complaint, Defendant **Grimes** acted under the color of law and as an EBRPP representative. Defendant **Grimes** is liable both directly and vicariously for the actions presented herein by Mr. Wilson. Defendant **Grimes** is sued both in his official and individual capacities as an officer of the EBRSO and EBRPP.

19. Defendant **CITY OF BATON ROUGE/PARISH OF EAST BATON ROUGE CONSOLIDATED GOVERNMENT (“PARISH”)** is a political entity capable of suing and being sued. The medical services at EBRPP are operated by Prison Medical Services (“PMS”), which is a division of Emergency Medical Services, which is a division within Parish government of East Baton Rouge. The **PARISH** is the entity responsible for funding the operations of Prison Medical Service (“PMS”), who upon information and belief is contracted by **Defendant Gautreaux** to provide medical services to inmates housed at EBRPP. PMS is an agency operated by the **Parish** and is located within the executive branch of the **Parish’s** government. Notwithstanding the contract between the **Parish** and the EBRSO, at all material times herein, **Defendant Gautreaux** and **Defendant Grimes** were also responsible for providing inmates with adequate medical treatment.

20. Defendant **LINDA OTTESEN** was the former director and healthcare administrator of Prison Medical Services, which was contracted by the EBRSO to provide medical treatment to the inmates at EBRPP at all times pertinent to the allegations herein. She is an adult citizen in the State of Louisiana and upon information and belief domiciled in the Middle District of Louisiana.

21. Defendant **Ottesen's** responsibilities included ensuring that staff and employees, including herself, followed proper procedures with respect to the inmates in their care, custody, and control. She was responsible for the hiring, training, supervision, administration, discipline, and control of all medical staff working in the EBRPP. She was also responsible for the supervision, administration, policies, practices, customs, and operations of PMS and its correctional facilities. Defendant **Ottesen** was a final policy maker in EBRPP regarding the jail's provision of medical care.

22. Defendant **Ottesen's** actions and omissions during Plaintiff Wilson's incarceration demonstrated deliberate indifference to his basic rights. She also implemented constitutionally deficient medical care for inmates – including Mr. Wilson – that directly led to constitutional and state law violations Mr. Wilson experienced while incarcerated at EBRPP. Defendant **Ottesen** is liable both directly and vicariously for the actions complained of herein.

23. Upon information and belief, at all times relevant to the allegations presented in the instant action, Defendant **Ottesen** oversaw and was personally involved in the decision-making process for providing appropriate medical care to EBRPP inmates, including Mr. Wilson. Defendant **Ottesen's** actions and omissions resulted in the myriad of constitutional and state law violations of which Plaintiff Wilson now complains.

During all moments pertinent to this complaint, Defendant **Ottesen** acted under the color of law and as a **Parish** representative. Defendant **Ottesen** is directly liable for the allegations presented herein by Mr. Wilson. Defendant **Ottesen** is liable both directly and vicariously for the actions presented herein by Mr. Wilson.

24. Defendant **Ottesen** is sued both in her official and individual capacities as a **Parish** officer.

25. Defendant **JAMES M. LEBLANC** is the Secretary of the Louisiana Department of Public Safety and Corrections (“DOC”). Upon information and belief, Defendant **LeBlanc** is domiciled in the Middle District of Louisiana. By law, he is responsible for protecting the constitutional and statutory rights of all persons held in the DOC’s custody. At all relevant times, Defendant **LeBlanc** was acting under color of law and as the agent, and as a matter of law, the official representative of the DOC. He is responsible for the overall operation of the DOC, including Elayn Hunt Correctional Center (“Elayn Hunt”) and the Louisiana State Penitentiary (“Angola”). On information and belief, Defendant **LeBlanc** has and continues to participate in decisions and in the creation of policies, patterns and practices that have and continue to deprive Mr. Wilson of his constitutional and statutory rights.

26. Defendant **LeBlanc** is sued in his individual and official capacity.

27. **DR. RAMAN SINGH** (hereinafter “**SINGH**”), is a person of the full age of majority and upon information and belief is domiciled in the Middle District of Louisiana. Defendant **Singh** is the Medical and Mental Health Director for the DOC. He is responsible for protecting the medical rights of all persons held in DOC’s custody and for assuring their access to and receipt of constitutionally sufficient medical care. At all

relevant times, Defendant **Singh** was acting under color of law and as the agent, and as a matter of law, the official representative of the DOC. On information and belief, Defendant **Singh** has and continues to participate in decisions and in the creation of policies, patterns and practices that have and continue to deprive Mr. Wilson of his constitutional and statutory rights.

28. Defendant **Singh** is sued in his individual and official capacity.

29. **TAMRYA YOUNG** (hereinafter “**YOUNG**”), is a person of the full age of majority and upon information and belief is domiciled in the Middle District of Louisiana. Upon information and belief, Defendant **Young** is a nurse that works in DOC headquarters office of medical and mental health. Upon information and belief her responsibilities include scheduling the appointments for inmates with medical referrals to non-DOC facilities. Defendant **Young** was acting under color of law and as a DOC agent and representative.

30. Defendant **Young** is sued in her individual and official capacities.

31. Defendant **ROBERT TANNER** was the Warden of Elayn Hunt Correctional Center (“Elayn Hunt”) in St. Gabriel, Louisiana. Upon information and belief, Defendant **Tanner** is domiciled in the State of Louisiana. By law, Defendant **Tanner** was responsible for protecting the constitutional and statutory rights of all persons held in Elayn Hunt custody. At all relevant times, Defendant **Tanner** was acting under color of law as the agent, and, as a matter of law, the official representative of Elayn Hunt. On information and belief, Defendant **Tanner** was aware of and participated in decisions and in the creation of policies, patterns and practices that deprived Mr. Wilson of his constitutional and statutory rights.

32. Defendant **Tanner** was responsible for assuring that staff and employees, including himself, follow proper procedures with respect to the inmates in Elayn Hunt's care, custody, and control. He is responsible for the hiring, training, supervision, administration, discipline, and control of all medical staff working at Elayn Hunt. He is also responsible for the supervision, administration, policies, practices, customs, and operations at Elayn Hunt. Defendant **Tanner** was a final policy maker at Elayn Hunt regarding the facility's provision of medical care.

33. Defendant **Tanner** is sued in his official and individual capacities.

34. Defendant **Karen Comeaux** is believed to be a nurse at Elayn Hunt Correctional Center in St. Gabriel, Louisiana. Upon information and belief, Defendant **Comeaux** is domiciled in the State of Louisiana. At all relevant times, Defendant **Comeaux** was acting under color of law as the agent, and, as a matter of law, the official representative of Elayn Hunt.

35. Defendant **Comeaux** was responsible for maintaining communication with DOC headquarters to ensure an appointment with an ENT specialist was scheduled for Mr. Wilson.

36. Defendant **Comeaux** is sued in her official and individual capacities.

37. Defendant **TIMOTHY HOOPER** is the Warden of Elayn Hunt Correctional Center ("Elayn Hunt") in St. Gabriel, Louisiana. Upon information and belief, Defendant **Hooper** is domiciled in the Middle District of Louisiana. By law, Defendant **Hooper** is responsible for protecting the constitutional and statutory rights of all persons held in Elayn Hunt custody. At all relevant times, Defendant **Hooper** is acting under color of law as the agent, and, as a matter of law, the official representative of Elayn Hunt.

38. On information and belief, Defendant **Hooper** was and is aware of and participated in decisions and in the creation of policies, patterns and practices that have and continue to deprive Mr. Wilson of his constitutional and statutory rights.

39. Defendant **Hooper** is responsible for assuring that staff and employees, including himself, follow proper procedures with respect to the inmates in Elayn Hunt's care, custody, and control. He is responsible for the hiring, training, supervision, administration, discipline, and control of all medical staff working at Elayn Hunt. He is also responsible for the supervision, administration, policies, practices, customs, and operations at Elayn Hunt. Defendant **Hooper** is a final policy maker at Elayn Hunt regarding the facility's provision of medical care.

40. Defendant **Hooper** is sued in his official and individual capacities.

41. **OTHER AS YET UNKNOWN DEFENDANTS** are adult citizens of the State of Louisiana, and on information and belief are all domiciled in Louisiana. At all pertinent times, Defendants were employed either by the DOC or the EBRSO as correctional officers; and/or employed or contracted by the **Parish** and were responsible for providing access, or direct medical services to Mr. Wilson. **Unknown Defendants** are sued in their individual capacities. Mr. Wilson expects to learn the identities of these individuals during the course of litigation.

42. **Defendant ABC INSURANCE COMPANIES** are a domestic or foreign insurance corporations authorized to do and doing business in the State of Louisiana, which, upon information and belief, at all times mentioned herein provided the **Parish**, the EBRSO, and the DOC and their employees with a policy of liability insurance for the acts and omissions complained of herein. The Plaintiff is unaware of the true name of

these Defendants and therefore sues by a fictitious name.

FACTUAL ALLEGATIONS

43. Prior to his incarceration, Mr. Wilson was a well-known rap and vocal artist in the Baton Rouge area. Following his indictment, various media sources labeled Mr. Wilson as the “kingpin” or “ringleader” of the racketeering enterprise. Upon information and belief, due to the high-profile nature of Mr. Wilson’s criminal case, Mr. Wilson was a prominent inmate known by Defendants **Gautreaux, Grimes, and Ottesen** during his incarceration at the EBRPP.

44. Mr. Wilson was admitted to the custody of the EBRPP as a pretrial detainee on or about September 16, 2013 and processed by PMS personnel on or about September 17, 2013. At that time, Mr. Wilson’s voice was strong, not hoarse, and he did not have a productive cough with blood.

History of Mr. Wilson’s Medical Condition and Treatment at EBRPP

45. Mr. Wilson first notified EBRPP officials about his medical condition when he filed a “Medical Request Form” on February 7, 2015, in which he stated, “My throat not sore yet, [but] I’ve been hoarse for five days now, maybe sinus drainage clogged up vocal chords lol I don’t know? But please need attention medically!!”

46. His initial request went completely ignored, and on or about February 11, 2015, Mr. Wilson filed a second medical request form, in which he wrote “This is my second request. For a week and a half my voice is gone. My throat is congested with mucus! I need to be checked please! Don’t need walking pneumonia, need to be checked for it, I’ve had it before!”

47. On or about February 14, 2015, PMS employee Ricky Guillory addressed Mr.

Wilson's medical request, noting that Mr. Wilson presented with a cough, nasal congestion, headache and malaise; he provided Mr. Wilson with Tylenol and Halls lozenges.

48. Over twenty days after Mr. Wilson first started experiencing symptoms related to his throat, on or about February 24, 2015, Doctor Whitfield saw and treated Mr. Wilson who continued complaining of a sore and hoarse throat with sinus congestion as he had done over the course of the previous three weeks. He also complained of trouble swallowing and a persistent cough. Defendant Whitfield observed that Mr. Wilson had symptoms consistent with a sore throat and hoarseness for which he was prescribed a seven-day treatment of Mucinex and the antibiotic Amoxicillin. Mr. Wilson completed his medication but it did not improve his medical condition.

49. On or about March 6, 2015, Mr. Wilson filed another medical request form and wrote: "my medication ran out, my throat been like this for a month, the problem is getting worse, requesting to go to the hospital, need to be seen by a doc!"

50. On or about March 16, 2015, Mr. Wilson filed a medical request form, where he stated: "I was under medicated my voice has been gone since 2-3-2015, my first sick call was on 2-7-2015, its 3-15-2015 I really need medical attention for my voice. I am prudent in law please its so simple to see me I was schedule for today but wasn't called. I need medical attention now please I'm in pain."

51. On March 18, 2015, Doctor Whitfield saw and treated Mr. Wilson. Mr. Wilson indicated that his medication was not working and he that needed to see a doctor because his throat continued to be sore and his voice was still hoarse. Mr. Wilson also told Doctor Whitfield that he still had a productive cough and had trouble swallowing.

52. Doctor Whitfield then diagnosed Mr. Wilson with a hoarse pharyngitis cough. He ordered the following medications for Mr. Wilson: the antibiotic cephalexin, the expectorant mucinex, and the steroid medrol. Mr. Wilson took this medication until March 28, 2015, but his medical condition did not improve.

53. At the conclusion of this examination, Doctor Whitfield did not refer Mr. Wilson to a ENT specialist, or to a facility that could examine his vocal chords with a scope, despite the fact that his symptoms had not improved for over two and a half months.

54. On or about March 21, 2015, Doctor Stuart examined Mr. Wilson. While this appointment concerned another medical issue of Mr. Wilson's, upon information and belief Mr. Wilson also told Doctor Stuart during this examination that his medical condition related to his throat, cough and voice was not improving.

55. At the conclusion of this examination, Doctor Stuart did not refer Mr. Wilson to a ENT specialist, or to a facility that could examine his vocal chords with a scope, despite the fact that his symptoms had not improved for over two and a half months.

56. On an unknown date believed to be during March of 2015, Defendant **Grimes** was making rounds in the prison when Mr. Wilson specifically told (as best he could with his hoarse voice) Defendant **Grimes** that his throat had been sore for more than three weeks, and that he needed medical attention.

57. Upon information and belief, in the beginning of April 2015, Mr. Wilson filed an official complaint regarding his medical care and ongoing problems with this throat. He asked to go to the hospital. On April 6, 2015, Defendant **Ottesen** responded that Mr. Wilson's grievance was unfounded and that his condition did not require hospital treatment.

58. From this point on, Defendant **Ottesen** was aware of Mr. Wilson's medical condition. And yet as PMS' medical director she failed to ensure her department could provide constitutionally sound medical care to Mr. Wilson and other inmates at the Parish Prison.

59. Mr. Wilson appealed Defendant **Ottesen's** decision, and on April 21, 2015, Defendant **Grimes** determined that Mr. Wilson's complaint and medical requests were unfounded.

60. Meanwhile, on April 11, 2015, Mr. Wilson filed another medical request form. He wrote that "since the 7th of February my voice has been gone. I've been prescribed not enough medication and the wrong dosage. I am requesting to go to the hospital for the third time. I need medical attention I feel I am being denied. If a doctor prescribe treatment than its serious....enough for proper treatment I don't bother ya can you please attend to my request! Y'all keep taking my money and I'm not being treated properly!"

61. On or about April 20, 2015, Mr. Wilson made a sick call and PMS staff noted in their chart that Mr. Wilson indicated that he "needed to see a MD regarding issue with voice."

62. On or about April 21, 2015, PMS employee, Nurse Vincent Bradley, signed a medical staff disposition that indicated Mr. Wilson should be referred to a physician. Nurse Bradley also saw Mr. Wilson and noted that he had a history of cough, nasal congestion, headache, malaise; and that he had nasal discharge and a productive cough on the date of his examination. During this encounter Mr. Wilson complained again about his sore throat, hoarse voice, productive cough and difficulty swallowing. Nurse Bradley gave Mr. Wilson Tylenol and a Halls cough lozenge.

63. At the conclusion of this examination, Nurse Bradley did not refer Mr. Wilson to a ENT specialist, or to a facility that could examine his vocal chords with a scope, despite the fact that his symptoms had not improved for nearly three-months.

64. On or about April 24, 2015, Doctor Bridges examined Mr. Wilson, who once again complained about his sore throat, productive cough, hoarse voice and difficulty swallowing were not improving. Doctor Bridges prescribed mucinex to Mr. Wilson.

65. At the conclusion of this examination, Doctor Bridges did not refer Mr. Wilson to a ENT specialist, or to a facility that could examine his vocal chords with a scope, despite the fact that his symptoms had not improved for nearly three-months.

66. Upon information and belief, unknown personnel of either the EBRSO or PMS denied Mr. Wilson the mucinex prescribed by Doctor Bridges.

67. On April 29, 2015, Doctor Bridges approved another round of prescription keflex to treat Mr. Wilson's still unresolved and worsening sore throat, hoarse voice, persistent and productive cough and difficulty with swallowing.

68. At the conclusion of this examination, Doctor Bridges did not refer Mr. Wilson to an ENT specialist, or to a facility that could examine his vocal chords with a scope, despite the fact that his symptoms had not improved for over nearly three-months.

69. On or about May 7, 2015, PMS staff Nurse Raine examined Mr. Wilson. Again, Mr. Wilson indicated that his medical condition was not improving and that he still had a sore throat, hoarse voice, productive cough and difficulty swallowing.

70. At the conclusion of this examination, Nurse Raine did not refer Mr. Wilson to a ENT specialist, or to a facility that could examine his vocal chords with a scope, despite the fact that his symptoms had not improved for over three-months.

71. On or about May 12, 2015, Doctor Bridges examined Mr. Wilson, where he again complained about his extant medical conditions including his sore throat, productive cough with blood, hoarse voice, and difficulty swallowing.

72. At the conclusion of this examination, Doctor Bridges did not refer Mr. Wilson to a ENT specialist, or to a facility that could examine his vocal chords with a scope, despite the fact that his symptoms had not improved for over three-months.

73. On or about May 29, 2015, a jury convicted Mr. Wilson of various drug related convictions. Upon information and belief, at this time he was transferred into the custody of the Department of Corrections, but remained housed in the Parish Prison.

74. On or about June 11, 2015, Mr. Wilson made a sick call and he was examined by PMS staff Nurse Raine. Again, Mr. Wilson indicated that his medical condition was not improving and that he still had a sore throat, hoarse voice, difficulty with swallowing and a productive cough.

75. At the conclusion of this examination, Nurse Raine did not suggest or refer Mr. Wilson to a ENT specialist, or to a facility that could examine his vocal chords with a scope, despite the fact that his symptoms had not improved for over three-months.

76. On at least one occasion, Doctor Whitfield explained to Mr. Wilson that his throat needed to get scoped and that the EBRPP did not have the equipment to conduct such a procedure.

77. He said to Mr. Wilson, “with you, it’s a money problem!”

78. Also, on at least one occasion, Doctor Whitfield explained to Mr. Wilson that Defendant **Grimes** makes the final decision as to whether an inmate receives medical care from a facility outside of the EBRPP. And that therefore it was Defendant **Grimes**

with the ultimate decision-making authority as to whether to permit Mr. Wilson to receive an examination of his vocal chords with a scope.

79. On a date in August of 2015, Mr. Wilson spoke a second-time directly to Defendant **Grimes** during a graduation party for inmates who had completed the prison's culinary arts program. Defendant **Grimes** brought the certificates to the graduating participants. At this event, Mr. Wilson said to Defendant **Grimes** with a hoarse voice, "Mr. Warden Grimes, what are going to do about this?" in reference to his unambiguously hoarse voice.

80. At this event, Mr. Wilson's mother also directly spoke to Defendant **Grimes** about her son's medical condition and his need to see a specialist because his condition was not improving.

81. Despite such first-hand knowledge of Mr. Wilson's medical problems for over three months, **Defendant Grimes** again chose to do nothing to facilitate getting Mr. Wilson – an inmate under his care and custody – the medical services he so clearly needed.

82. Then, on or about August 7, 2015 Mr. Wilson filed a medical request form where he notified the prison that his "voice still hasn't gotten better. [My] larynx or throat is inflamed, I need a steroid shot or hospital, [its] been treated three times [and the] medicine didn't work. Been like this since 2-7-15."

83. On or about August 13, 2015, Mr. Wilson made another sick call and he was examined by PMS nurse Raine concerning his ongoing and unresolved medical issue with his throat.

84. At the conclusion of this examination, Nurse Raine did not suggest or refer Mr.

Wilson to a ENT specialist, or to a facility that could examine his vocal chords with a scope, despite the fact that his symptoms had not improved for over six and a half months.

85. On or about August 14, 2015, Doctor Stuart examined Mr. Wilson who at this point had no voice. At the conclusion of this examination, Doctor Stuart did not suggest or refer Mr. Wilson to a ENT specialist, or to a facility that could examine his vocal chords with a scope, despite the fact that his symptoms had not improved for over three-months.

86. On or about August 16, 2016, Doctor Stuart examined Mr. Wilson again. Mr. Wilson again complained about his medical condition, referencing his hoarse voice, productive cough, and sore throat. At the conclusion of this examination, Doctor Stuart did not suggest or refer Mr. Wilson to a ENT specialist, or to a facility that could examine his vocal chords with a scope, despite the fact that his symptoms had not improved for over three-months; rather Doctor Stuart prescribed Mr. Wilson with the steroid Medrol.

87. On or about August 19, 2015, Mr. Wilson's mother called the medical staff at EBRPP with concerns about her son's unresolved and ongoing medical problems with his voice and throat.. PMS RN Bea Stines noted in Mr. Wilson's chart that prison staff informed Mr. Wilson's mother that the issue would be addressed by a doctor.

88. On information and belief, on or about August 31, 2016 Doctor Stuart conducted an examination of Mr. Wilson. After seven months of ongoing symptoms, and persistent requests to see a specialist, Doctor Stuart recommended that Mr. Wilson be referred to an Ear, Nose and Throat ("ENT") specialist.

89. Over 20 days later, on September 21, 2015, PMS staff submitted a request to the Louisiana Department of Corrections (DOC) for approval to schedule an appointment with an ENT specialist at Our Lady of the Lake, in Baton Rouge, Louisiana.

90. On or about October 9, 2015, an employee of the EBRPP and/or PMS scheduled a telemed appointment for Mr. Wilson with an ENT physician at our Lady of the Lake for October 28, 2015.

91. On or about October 27, 2015, a Nineteenth Judicial District Judge adjudicated Mr. Wilson as a fourth felony offender, and sentenced him to serve sixty years at hard labor in DOC custody.

92. On October 28, 2015, an unknown physician at Our Lady of the Lake's ENT Clinic conducted a telemed examination of Mr. Wilson regarding his throat. Upon information and belief, the video did not work for the examination. It was determined that Mr. Wilson needed to be scheduled with a face-to-face appointment where the clinic could evaluate his vocal chords with a scope.

93. Upon information and belief, just following this appointment, the Louisiana Department of Corrections ("DOC") transferred Mr. Wilson from EBRPP to the Jackson Parish Correctional Center ("JPCC").

History of Mr. Wilson's Medical Condition and Treatment at JPCC, Elayn Hunt and Allen Correctional Center

94. Upon information and belief, employees of the EBRSO and/or PMS sent Mr. Wilson's medical file to the JPCC when he was transferred. His medical file contained or should have contained information about his referral to an ENT specialist and the need to have his vocal chords evaluated with a scope.

95. Mr. Wilson complained through appropriate avenues at JPCC about the ongoing and worsening condition of his throat and voice.

96. Upon information and belief, despite Mr. Wilson's ongoing and known discomfort by LaSalle and JCC medical staff and personnel, these unknown Defendants never evaluated Mr. Wilson's vocal chords. Upon information and belief, LaSalle and JCC staff never arranged to have Mr. Wilson's vocal chords examined by an appropriate physician with access to a scope

97. On information and belief, on or about November 4, 2015, LaSalle and/or JCC medical personnel sent a "Medical Transfer Request" to DOC headquarters. In this request, JPCC personnel indicated that the request was urgent and that there was "possible throat cancer" and/or "possible thyroid cancer."

98. On another JCC form from November 6, 2015, it is indicated that Mr. Wilson needs to be referred to an ENT for evaluation of hoarseness for 7 months."

99. Upon information and belief, **Defendants Singh and Young** received this request urgent request from JPCC. Yet, these **Defendants** did nothing to arrange for Mr. Wilson to see a specialty doctor, despite a clear indication from LaSalle medical staff that it believed Mr. Wilson possibly had cancer.

100. Mr. Wilson exercised all avenues available to him while in Jackson Correctional Center's custody to try to seek medical help, including making medical requests and filing administrative remedy procedure (ARP) requests. These requests were ignored and his ARPs were denied.

101. On or about November 23, 2015, the DOC transferred Mr. Wilson from JPCC to Elayn Hunt – a DOC operated prison.

102. Upon information and belief, employees of LaSalle and/or JCC sent Mr. Wilson's medical file to Elayn Hunt when he was transferred on or about November 23, 2015; and that this file contained information about his need to see an ENT and to have his vocal chords evaluated with a scope.

103. During Mr. Wilson's initial intake at Elayn Hunt, his medical screening form indicates that he has had a productive cough.

104. On November 23, 2015, Nurse Practitioner Michelle Minor filled out a Doctor's Call Sheet and sent it to Defendants **Singh** and **Young**, indicating that Mr. Wilson had an ENT referral and needs an appointment. This form indicates that Defendant **Comeaux** – an Elayn Hunt nurse—would follow up with headquarters.

105. On another medical form from November 23, 2015, NP Minor indicates to Defendant **Comeaux** that she needs to schedule an appointment for Mr. Wilson to see an ENT.

106. However, during Mr. Wilson's initial stay at Elayn Hunt, DOC Headquarters Defendants and Elayn Hunt Defendants completely failed to follow through and arrange for Mr. Wilson to be seen by a specialist.

107. Meanwhile, Mr. Wilson complained through appropriate avenues at Elayn Hunt about the ongoing and worsening condition of his throat and voice. On at least one occasion he showed Elayn Hunt medical personnel blood and tissue that he had coughed up.

108. On December 2, 2015 he made a sick call stating, "my throat hurts left ear been without voice since Feb. 7 2015. Never been properly treated, getting none of my meds scence [sic] I been here."

109. On December 2, 2015, Mr. Wilson makes another sick call stating, "my throat voice been gone for 9 months, went untreated for a while."

110. On December 6, 2015, Mr. Wilson fills out a health care request form and writes "I haven't gotten my medication scence [sic] I Been here also burning in my throat and left ear pain bad. Real bad, larynx swollen, voice been gone for 10 months, sinus infection went untreated and unproperly treated. Need to see a (ENT), also my balance feels off, equaliberation off, some mornings I woke up."

111. Despite his complaints, upon information and belief, Mr. Wilson's ongoing and known discomfort, Defendant **Comeaux** and other Elayn Hunt medical staff never evaluated Mr. Wilson's vocal chords.

112. Defendant **Comeaux** never followed through with making the necessary arrangements with Defendant **Young** and DOC Headquarters so that Mr. Wilson could be taken to a facility where he could be seen by an ENT specialist and have his throat scoped.

113. On or about December 28, 2015, the DOC transferred Mr. Wilson from Elayn Hunt to Allen Correctional Center in Kinder, Louisiana, which is owned and operated by Geo as a private prison.

114. Employees of Elayn Hunt sent Mr. Wilson's medical file to Allen Correctional Center when he was transferred on or about December 28, 2015. The file contained documentation that Mr. Wilson's current medical condition included a

progressive sore throat and hoarse voice and that he needed to be scheduled to see an ENT specialist.

115. Upon information and belief, on or about December 29, 2015, Geomedical staff informed the DOC Headquarters defendants (**Singh, Young** and other unknown DOC individuals) that Mr. Wilson needed an appointment with an ENT specialist.

116. Mr. Wilson complained through appropriate avenues at Allen about the worsening condition of his throat and voice, including making sick calls and filing ARPs to Allen's Warden's Office.

117. Upon information and belief, despite Mr. Wilson's ongoing and known discomfort, Allen medical staff never evaluated Mr. Wilson's vocal chords. Upon information and belief, Allen staff did not arrange for another two months for Mr. Wilson to have his vocal chords examined by an appropriate physician.

118. In fact, through those two months, Mr. Wilson made repeated efforts to get medical help, yet everywhere he turned he was denied relief.

119. On or about January 4, 2016, Mr. Wilson makes a sick call and writes, "I need to go to a ear nose and throught [sic] doctor my problem is emergency status. Need to have a cat scan and ultra sound on my throught [sic]. I'm in pain I need to go to a specialist, I cough up bloody muges or (mukes) from my throught [sic].... I need to go to a ear nose and throught doctor for my trought please... don't egnore [sic] this request. I was refused an emergency last Friday – by staff. In pain running from my throat to my left ear. I need my voice back. By me not getting attention, I let you know from when I first arrived is denial of medical attention y'all haven't seen or treated me for my real

problem, my thought. My voice....I need a doctor a specialist ENT – Doctor please, and to be treated until then.”

120. On or about January 5, 2016, Mr. Wilson makes another sick call and this time writes, “for 11 months my throat has been abnormal. Right now feels like a dagger is in my left ear, a throbbing pain, and the left side of my throat is in pain also the ear drops not working. I need to see a doctor! I need to be treated for this its been 11 months I haven’t seen a doctor to treat this correctly!”

121. On or about February 1, 2016, Mr. Wilson makes another request, “my throat is burning and in pain, my neck is stiff and ear, temple, behind my ear is in pain, lack of proper treatment is worsening my illnesses. I’m sufficiently pleaded imminent danger of serious physical (emergency?? “Energy”) a referral to a ENT, is not the ENT, I request to be sent to a hospital because I was told, that yall have done all you can do. The illness is still here, at hospitals specialists are on call. I request to not be in pain by seeing specialist and be taken to a professional medical facility (hospital) also I request to see the doctor here, coughing blood is not regular.”

122. On or about February 22, 2016, Mr. Wilson filled out a health care request form where he wrote the following: “2-19th-2016 at 4:20 pill call, I notified the nurse I was bleeding from the throat and I could spit and show her now. I was told to ask nancy or nikki for an update on my appointment. I’ve been told to wait for DOC to approve the trip. My medical is bigger than wait. I’m in pain every day. Yall said yall done all you can do, I requested to be sent to a hospital, hospitals have ear nose and throat doctors on call, please I don’t want to die like the guy did yesterday because of stage 4 cancer . . .”

123. On or about February 26, 2016, Mr. Wilson filled out another health care request form where he wrote: "count cased me to not see medical, 10:30 sick call, when they called people out I was told it was only for gym orderly, big yard orderly and Kitchen workers, after evening pill call I asked Mrs. Abear she told me to fill out another, my eqaulibirum is off, and I have pressure behind my eyes, and they blurry a little. Also I cough up blood from my throat. I have been very patient with medical departments for the past year, can you please send me a hospital and I need to see the doctor there....."

124. It was not until February 29, 2016 -- over a year since Mr. Wilson first tried to seek treatment for this throat conditions -- that Mr. Wilson received an examination from Doctor Rachel Barry, an otolaryngologist at University Hospital.

125. Dr. Barry conducted a laryngoscopic examine on Mr. Wilson's vocal chords and discovered a large tumor on his left false vocal cord.

126. From March 15-16, 2016, University Hospital readmitted Mr. Wilson in order to perform a panendoscopy and biopsy of the tumor on his vocal chord.

127. On March 23, 2016, Mr. Wilson returned to University Hospital, where specialists informed Mr. Wilson that he had squamacell carcinoma cancer. Their recommended treatment was to perform a total laryngectomy with bilateral neck dissections.

128. Mr. Wilson underwent surgery on March 31, 2016 where doctors performed a total laryngectomy with bilateral neck dissections. On or about April 11, 2016, Mr. Wilson returned to Allen Correctional Center.

Ongoing Experiences of Unconstitutional Medical Care Post-Laryngectomy

129. Following the laryngectomy, DOC returned Mr. Wilson to Elayn Hunt,

now under the supervision of Defendant **Hooper**, so that he could undergo a six-week course of radiation treatment in Baton Rouge.

130. On or around June 13, 2016 Mr. Wilson reported to Elayn Hunt employees and medical staff that his radiation therapy was causing his stoma to close up. He requested a smaller laryngectomy tube but Elayn Hunt medical staff refused to provide one.

131. Despite repeated complaints from Mr. Wilson, unknown Elayn Hunt defendants used a van without functioning air conditioning in June and July of 2016 to transport Mr. Wilson to his radiation treatments in Baton Rouge. Exhaust from the vehicle also came into the passenger area of the van. The exhaust combined with the extreme summer heat caused significant and unnecessary pain and discomfort for Mr. Wilson.

132. Mr. Wilson's mother called the Warden's office and complained about the heat conditions in the van. Upon information and belief, no representative from the Warden's Office at Elayn Hunt returned her phone call.

133. Mr. Wilson concluded radiation treatment on July 19, 2016.

134. Following the unprecedented flooding in the Baton Rouge area in September 2016, the DOC moved Mr. Wilson to the Louisiana State Penitentiary at Angola.

135. It has since returned him to the skilled nursing unit at Elayn Hunt, where he is currently housed.

Violations of Mr. Wilson's Constitutional Rights at East Baton Rouge Parish Prison

136. Defendants **Gautreaux, Grimes** and **Ottesen** collaborated and were in

direct communication about providing medical treatment to EBRPP inmates, including Mr. Wilson, during all pertinent times to the allegations herein.

137. Defendants **Gautreaux, Grimes, Ottesen** and the **Parish** ratified or condoned acts or omissions by EBRPP staff and medical personnel (contracted or not), which caused serious harm, suffering and death to inmates at EBRPP. Defendants **Gautreaux, Grimes, Ottesen** and the **Parish's** inactions with respect to these policies, practices, and procedures was motivated by deliberate indifference to the serious medical needs for inmates, like Mr. Wilson.

138. Defendants **Gautreaux, Grimes, Ottesen** and the **Parish** must have known, or should have known of the risk of causing serious physical, emotional and mental injury to EBRPP inmates due to a pattern and practice of not properly funding the medical services within the jail so that it lacked essential equipment and was chronically understaffed. The following examples illustrate the impact of the dysfunctional medical system inside of the EBRPP:

- a federal lawsuit is pending before this District regarding the unconstitutional denial of medical treatment resulting in the death of Paul R. Cleveland on November 12, 2014.
- another federal lawsuit is currently before this District that raises claims concerning the unconstitutional denial of dental treatment for an inmate from September-October 2013.
- also before this court is case number 15-850 that asserts allegations that Defendants **Gautreaux, Grimes**, and Doctors Bridges and Stuart failed to treat an inmate with chronic myelogenous leukemia in 2014.

139. On August 27, 2015, the *Baton Rouge Advocate* published an article entitled "Medical staff at East Baton Rouge Parish Prison say they are understaffed, overworked and lack critical supplies." This article quotes Doctor Whitfield saying that

there has been a “significant decline in the quality of care delivered to the inmate population over the past six or seven years.” Doctor Whitfield also states that “[i]t’s true that we have a sicker inmate population, and without proper resources, supplies and more boots on the ground in the form of nursing staff, we are unable to efficiently care for the patients’ increasing morbidity, mortality and, ultimately, liability.”

140. In this August 27, 2015 article Doctor Whitfield also indicated that the EBRPP only staffs 25 nurses, a primary care doctor, a surgeon who is also a urologist, a dentist, a psychiatrist and an internist who comes three or four times a month to manage only HIV patients. Doctor Whitfield indicated that 35-40 nurses were needed in order to properly serve the prison’s 1,600 inmates, that they are tasked with treating the prison’s 1,600 inmates.

141. The article also indicated that “there is supposed to be a minimum of five nurses on staff per shift, but there have sometimes been as few as one or two nurses on staff to manage an entire shift” at the EBRPP.

142. Yet, Defendants **Gautreaux, Grimes and Ottesen** and the **Parish** failed to take adequate steps as required by law to ensure that appropriate and necessary changes in policies and procedures related to staffing, training, classification, or conditions at EBRPP were taken in order to provide constitutionally sound medical care.

143. Defendants **Gautreaux, Grimes, Ottesen** and the **Parish** also had the responsibility and duty to properly supervise and oversee the job performances of staff and medical personnel, including Doctors Bridges, Whitfield and Stuart. In particular, they each were each responsible for ensuring that employees followed proper procedures – including not committing medical malpractice. These doctors knew or should have

known the dangers and obvious risks to one's throat and vocal chords after prolonged periods of soreness, hoarseness, productive coughing and difficulty with swallowing.

144. Defendants **Gautreaux, Grimes, Ottesen** and the **Parish** actions and omissions with respect to the medical care needed by Mr. Wilson exhibited deliberate indifference in providing him with constitutional medical care to treat his ongoing and serious medical condition while incarcerated at EBRPP.

145. Defendants **Gautreaux, Grimes, and Ottesen** all had first hand knowledge of Mr. Wilson's medical conditions. They took no action to get him the appropriate relief, and such omissions demonstrated a deliberate indifference to Mr. Wilson and resulted in an unnecessarily late diagnosis of squamous carcinoma cancer.

146. Defendants **Gautreaux, Grimes, Ottesen** and the **Parish** also individually and collectively ignored the foreseeable consequences of not providing access to medical care outside of the EBRPP for inmates like Mr. Wilson.

History of Defendants' Unconstitutional Actions and Omissions in EHCC

147. Defendant **Tanner, Comeaux** and other unknown Elayn Hunt employees' actions and omissions with respect to the medical care needed by Mr. Wilson exhibited deliberate indifference in providing him with constitutional medical care to treat his ongoing and serious medical condition while incarcerated at Elayn Hunt.

148. Defendant **Tanner, Comeaux** and other unknown Elayn Hunt employees knew, must have known, or should have known the dangers and obvious risk to one's throat and vocal chords after prolonged periods of soreness, hoarseness, productive coughing and difficulty with swallowing. They knew, must have known, or should have known that Mr. Wilson required an examination of his vocal chords with a scope.

149. Defendant **Tanner**, Comeaux and other unknown Elayn Hunt employees individually and collectively ignored the foreseeable consequences of not properly treating Mr. Wilson's ongoing and persistent medical condition with his throat, which he would then later experience from their actions and omissions when he was diagnosed with an advanced form of squamous cell carcinoma cancer.

150. Defendant **Tanner Comeaux** and other unknown Elayn Hunt employees, individual and collective failure to bring Mr. Wilson to an ENT specialist, despite clear proof of its need, while he was incarcerated at Elayn Hunt amounts to them individually and collectively ignoring Mr. Wilson's repeated requests for help.

Unconstitutional Actions and Omissions by DOC Headquarters Defendants

151. Defendant **Singh** is responsible for running of DOC's operations to provide medical services to inmates under its custody.

152. At a minimum, medical staff at the various facilities that housed Mr. Wilson informed Defendants **Singh**, **Young** and other unknown headquarters employees *at least four times* about Mr. Wilson's need to be seen by an ENT specialist.

153. Some of those communications to DOC headquarters Defendants were marked as urgent.

154. At least one communication indicated that medical staff was concerned that Mr. Wilson *might have throat or thyroid cancer*. After this specific warning, at least two additional communications were made to DOC headquarter employees **Young** and others. And yet, Defendants **Singh**, **Young** and other unknown employees failed to schedule Mr. Wilson an appointment for four months.

155. Upon information and belief, as the DOC Medical Director, Defendant **Singh** is directly involved in the scheduling and arrangement of appointments for DOC inmates at off-site facilities.

156. Upon information and belief, Defendant **Young** is a nurse employed at DOC headquarters that manages the scheduling and arrangement of appointments for DOC inmates at off-site facilities.

157. Despite direct knowledge of Mr. Wilson's critical medical needs, Defendants **Singh**, **Young**, and other unknown employees, on multiple occasions ignored prison requests to schedule an ENT appointment for Mr. Wilson. This failure amounts to deliberate indifference toward Mr. Wilson and his obvious medical needs.

Defendants **LeBlanc** and **Singh** collaborated and were in direct communication about providing medical treatment to DOC inmates, including Mr. Wilson, during all times pertinent to the allegations herein.

158. Defendants **LeBlanc** and **Singh** ratified or condoned acts or omissions by DOC staff and medical personnel, which caused serious harm, suffering and death to DOC inmates like Mr. Wilson. Defendants **LeBlanc** and **Singh**'s inactions with respect to these policies, practices, and procedures was motivated by deliberate indifference to the serious medical needs for inmates, like Mr. Wilson.

159. Defendants **LeBlanc** and **Singh** knew or should have known of the risk of causing serious physical, emotional and mental injury to DOC inmates due to a pattern and practice of not timely scheduling essential medical appointments with specialists for inmates.

160. In fact, the DOC's pattern and practice of failing to provide its inmates constitutionally adequate medical care is the subject of another pending action, *Lewis et al. v. Cain et al.*, no. 3:15-cv-318. That complaint identifies the historical pattern and practice of denying or delaying inmates – like Mr. Wilson – specialty care when needed. One Plaintiff in that matter, Joseph Lewis, experienced nearly identical treatment to Mr. Wilson. Mr. Lewis made repeated sick calls and requests about his throat beginning in February 2013. He was not taken to receive a laryngoscopy until January 2015, where it was learned that he needed a biopsy, and it was discovered that he had throat cancer.

161. Defendant **LeBlanc** and **Singh**'s health care policies state that health care delivered outside of DOC facilities or the LSU system "shall only be allowed if that care is medically necessary to save life or limb." DOC Health Care Policy No. HC-03(6)(C)(3)).

162. Upon information and belief, as early as February 2012, Defendants **LeBlanc** and **Singh** have been aware of unconstitutional delays for offender visits to outside facilities for critical care.

163. Defendants **LeBlanc** and **Singh** failed to supervise Defendant **Young** and other unknown DOC Headquarters defendants to ensure that they timely scheduled and arranged for inmates like Mr. Wilson to receive specialty appointments at medical facilities outside of the DOC. Despite this knowledge, Defendant **LeBlanc** and **Singh** continued to maintain a policy and practice of delaying and/or denying access to critical medical care at facilities outside of DOC.

164. These Defendants acts and omissions were deliberately indifferent to the fact that failure to provide adequate medical care to inmates like Mr. Wilson posed a substantial risk of serious physical harm and unnecessary suffering.

165. Such systemic policies and practices that are administered, overseen, condoned and ratified, both individually and in combination, by Defendants **LeBlanc** and **Singh** deprived Mr. Wilson of his right to adequate medical care.

166. Mr. Wilson submitted multiple complaints through the Administrative Remedy Procedure (“ARP”) seeking relief for his the constitutional and statutory violations he incurred while detained as an inmate in the EBRPP and DOC. Since that time, Mr. Wilson has exhausted all administrative remedies available to him at the EBPRPP and DOC through the ARP process.

167. All of the defendants are liable to the plaintiff for compensatory and punitive damages.

168. All of the defendants are liable jointly, severally, and in solido for the Mr. Wilson’s injuries.

169. The defendants’ actions were reckless, willful, wanton, and malicious, and constituted deliberate indifference to the rights of the Mr. Wilson. The defendants’ actions were the proximate cause of the injuries and the damages sustained by Mr. Wilson.

CAUSES OF ACTION

Count 1: Violation Based on Establishment of a System in which Inmates with Serious Medical Needs are Denied Access to Appropriate Medical Care

(Against Defendants Gautreaux, LeBlanc, Ottesen and the City of Baton Rouge/Parish of East Baton Rouge Consolidated Government (“Parish”))

170. Mr. Wilson repeats and realleges each and every allegation of this Complaint.

171. The Defendants named in this Count are sued in their official capacity. These Defendants, acting individually and together and under color of law, engaged in a course of conduct that deprived Mr. Wilson, when he was both a pretrial detainee and DOC inmate, of his constitutional rights to be free from cruel and unusual punishment, right to due process and right to equal protection of the laws as protected by the Eighth Amendment and Fourteenth Amendment of the United States Constitution and Article I, Sections 2, 3, 7, 9, and 20 of the Louisiana Constitution of 1974.

172. Defendants **Gautreaux, Ottesen** and the **Parish** violated Mr. Wilson's constitutional rights by creating a contractual relationship that resulted in inadequate, insufficient and underfunded health care services that they knew would result in deprivation of adequate medical care for prisoners with serious medical conditions. Mr. Wilson was individually harmed by the insufficiency of the contract between **Gautreaux** and **Ottesen and the Parish**. These parties' failures deprived Mr. Wilson of access to appropriate medical treatment he needed while housed as both a pre-trial and DOC inmate at the EBRPP, and resulted his total laryngectomy and other extreme physical, mental and emotional harm.

173. Defendant **LeBlanc** violated Mr. Wilson's constitutional rights by creating a contractual relationship LaSalle, JCC and Geo that resulted in inadequate, insufficient and underfunded health care services that he knew would result in deprivation of adequate medical care for prisoners with serious medical conditions. Mr. Wilson was individually harmed by the insufficiency of the DOC's contract with LaSalle, JCC and

Geo. These private entities' failures deprived Mr. Wilson of the appropriate medical treatment and care that he needed while housed as a DOC inmate at these private facilities. These Defendants' actions and omissions resulted in Mr. Wilson receiving a total laryngectomy and other extreme physical, mental and emotional harm.

174. Defendants **Gautreaux, LeBlanc** and the **Parish** violated Mr. Wilson's constitutional rights by creating contractual relationships that resulted in inadequate and insufficient communication between the DOC, LaSalle, JCC, Geo, and the Parish regarding inmates transferred between the entities, that they knew would result in the deprivation of adequate medical care for prisoners with serious medical conditions.

175. At all pertinent times herein, the named Defendants in this count, individually and collectively, acted unreasonably, recklessly, and with deliberate indifference and disregard for the constitutional and civil rights of Mr. Wilson by failing to provide appropriate health care services.

176. Mr. Wilson further alleges that such acts as alleged herein were the proximate cause and cause in fact of the injuries sustained and the harm Mr. Wilson has suffered due to the actions and omissions by the Defendants.

177. The Defendants named in this count acted recklessly, willfully, wantonly, and/or maliciously.

178. Mr. Wilson brings his federal constitutional claims through 42 U.S.C. § 1983; and his state constitutional claims through La. R.S. 13:5101 *et. seq.*

Count 2: Violation Based on Failure to Supervise Other Defendants to Ensure Inmates Received Appropriate Care for Serious Medical Needs

(Against Defendants Gautreaux, Grimes, Ottesen, LeBlanc, Singh and Tanner)

179. Parish Defendants **Gautreaux, Grimes, Ottesen, LeBlanc, Singh** and **Tanner** in their individual and official capacities, acting individually and together and under color of law, engaged in a course of conduct that deprived Mr. Wilson of his constitutional rights to be free from cruel and unusual punishment, right to due process and right to equal protection of the laws as protected by the Eighth Amendment and Fourteenth Amendment of the United States Constitution and Article I, Sections 2, 3, 7, 9, and 20 of the Louisiana Constitution of 1974.

180. Parish Defendants **Gautreaux, Grimes, and Ottesen** failed to supervise their subordinates, namely Doctors Whitfield, Bridges, Stuart and other medical personnel, to ensure that these subordinates did not ignore inmates' requests for medical treatment, fail to refer inmates needing treatment to appropriate health care professionals, and/or fail to properly monitor inmates' whose medical conditions do not improve and/or worsen while incarcerated in their custody.

181. DOC Defendants **LeBlanc, Singh, and Tanner** failed to supervise their subordinates within the DOC, whose names are not yet known to Mr. Wilson. Mr. Wilson was directly harmed by these Defendants' failures to supervise their medical employees whose actions resulted in untimely access to specialty care at facilities outside of DOC. These Defendants' failures resulted in Mr. Wilson's delayed cancer diagnosis, his total laryngectomy and other extreme physical, mental and emotional harm he experienced due to his untreated medical condition.

182. At all pertinent times herein, Defendants **Gautreaux, Grimes, Ottesen, LeBlanc, Singh, and Tanner**, were aware of the need to supervise their subordinates in order to ensure that they did not violate prisoners' rights. These Defendants ignored that

need and acted unreasonably and with deliberate indifference and disregard for the safety of Mr. Wilson, as described above.

183. Mr. Wilson further alleges that such acts as alleged herein were the proximate cause and cause in fact of the injuries sustained and the harm Mr. Wilson has suffered due to the actions and omissions by the Defendants.

184. The Defendants named in this count acted recklessly, willfully, wantonly, and/or maliciously.

185. Mr. Wilson brings his federal constitutional claims through 42 U.S.C. § 1983; and his state constitutional claims through La. R.S. 13:5101 *et. seq.*

Count 3: Violation Based on Deliberate Indifference to Mr. Wilson's Constitutional Right to Appropriate Medical Care

(Against Defendants Grimes, Ottesen, Singh, Young, Tanner, Comeaux, Hooper and other unnamed Defendants)

186. Mr. Wilson repeats and realleges each and every allegation of the Complaint.

187. The above-named Defendants are sued in their individual and official capacities. These Defendants, acting individually and together, and under color of law, engaged in a course of conduct that acted to deprive Mr. Wilson of his constitutional rights and did deprive him of said rights, specifically, the right to reasonable and adequate medical care, the right to be free from cruel and unusual punishment, the right to due process and equal protection of the laws as protected by the Eighth and Fourteenth Amendments of the United States Constitution and and Article I, Sections 2, 3, 7, 9, and 20 of the Louisiana Constitution of 1974.

188. At all pertinent times herein, these Defendants, acting individually and

collectively, acted unreasonably, recklessly, maliciously, and/or with deliberate indifference and disregard for the constitutional and civil rights and serious medical needs of Mr. Wilson. Furthermore, these Defendants, individually and collectively, had the duty and ability to intervene to prevent the violations of the rights of Mr. Wilson, as described herein, but failed to do so.

189. Mr. Wilson further alleges that such acts as alleged herein were the proximate cause and cause in fact of the injuries sustained and the ongoing harm Mr. Wilson has suffered due to the actions and omissions by the Defendants.

190. Mr. Wilson brings his federal constitutional claims through 42 U.S.C. § 1983; and his state constitutional claims through La. R.S. 13:5101 *et. seq.*

Count 4: *Monell* Violation Based on Establishment of Policies, Patterns or Practices pursuant to which Inmates with Serious Medical Conditions are Denied Access to Appropriate Medical Care

(Against Defendants Gautreaux, Parish, LeBlanc and Singh)

191. Mr. Wilson repeats and realleges each and every allegation of the Complaint.

192. The Defendants named in this Count, acting individually and together, under color of law, acted to violate Mr. Wilson's right to be free from cruel and unusual punishment and the right to due process and equal protection of the laws as protected by the Eighth and Fourteenth Amendments of the United States Constitution. Defendants **Gautreaux** and the **Parish** did so individually and together by establishing and maintaining policies, patterns and/or practices that they knew would deprive pre-trial detainees and DOC inmates of their constitutional rights while housed at the EBRPP. Defendants **LeBlanc, Singh, Hooper, and Tanner** did so by establishing and

maintaining policies, patterns and/or practices that they knew would deprive inmates in the DOC custody of their constitutional rights.

193. These written and unwritten policies, customs, patterns and practices include:

- a. A pattern and practice of inadequate, improper, and unreasonable screening procedures for risks of serious medical harm to inmates;
- b. Inadequate, improper, and unreasonable medical services for inmates;
- c. Inadequate, improper, and unreasonable access to medical care for inmates;
- d. Hiring of inadequately trained and inexperienced persons to care for persons in custody;
- e. Hiring of inadequately trained persons to render medical treatment to inmates in custody;
- f. Inadequate hiring, training, supervision, and discipline of staff and medical personnel responsible for the observation and monitoring of inmates and the identification and communication of serious medical needs of inmates to appropriate medical personnel and staff;
- g. A pattern and practice of inadequately staffing the EBRPP, Elayn Hunt, JPCC, Angola and Allen Correctional Center;
- h. A pattern and practice of providing insufficient and inadequate medical equipment for medical staff;
- i. A pattern and practice of ignoring inmates' requests and needs for medical treatment, including the need for proper referrals, medications and testing;
- j. A pattern and practice of providing unreasonable and patently insufficient treatment for inmates' medical conditions;
- k. A pattern and practice of failing to properly diagnose inmates' medical conditions, and causing serious pain, suffering, injury, and/or death;
- l. A pattern and practice of inefficiency and gross negligence in transporting inmates' medical files between jails, DOC and private prisons contracted by the DOC;
- m. A pattern and practice of inefficiency and gross negligence in communicating critical medical needs between jails, the DOC and private prisons contracted by the DOC about inmates when they are transferred to different facilities;
- n. a pattern and practice of denying or delaying critical care at medical facilities outside of the DOC;
- o. Inadequate quality control policies, procedures, and practices; and correction of serious deficiencies in policy and practices affecting the treatment of inmates with serious medical conditions;

194. In addition to the injuries sustained by Mr. Wilson as alleged herein, the deliberate indifference of the named Defendants in this Count, to the medical needs of

inmates in their custody and control has resulted in numerous other instances of detainees suffering serious and oftentimes fatal injuries and illnesses.

195. At all times pertinent herein, the Defendants named in this Count, individually and collectively, acted unreasonably and with deliberate indifference and disregard for the constitutional and civil rights of Mr. Wilson by establishing the above-described policies, patterns, and/or practices.

196. The above-named Defendants are therefore liable to the plaintiff for the violation of constitutional rights described above pursuant to *Monell v. Dept. of Soc. Servs.*, 436 U.S. 658 (1978).

Count 5: Negligence

(Against all Defendants)

197. Mr. Wilson repeats and re-alleges each and every allegation of the Complaint.

198. All Defendants in their individual capacities, acting individually and/or together, and under color of law, committed the state law torts of negligence on Mr. Wilson. At all times described herein, the Defendants', individual and collective actions and omissions fell beneath their applicable standard of care, as they negligently, with gross negligence and/or intentionally failed to properly provide Mr. Wilson with access to medical care; failed to properly care for him; failed to properly monitor him; failing to properly screen, hire, train, supervise, and discipline persons under their supervision and control whose acts and omissions contributed to Plaintiff Wilson's injuries; and in inflicting physical injury and severe emotional, mental and physical pain and suffering upon him. They are therefore liable to Mr. Wilson, as described herein.

Count 6: Intentional and/or Negligent Infliction of Emotional Distress
(Against all Defendants)

199. Mr. Wilson repeats and re-alleges each and every allegation of the Complaint.

200. All Defendants in their individual capacities, acting individually and/or together, and under color of law, committed either the state law tort intentional and/or negligent infliction of emotional distress on Mr. Wilson. At all times described herein, the Defendants', individual and collective actions and omissions fell beneath their applicable standard of care, as they negligently, with gross negligence and/or intentionally failed to properly provide Mr. Wilson with access to medical care; failed to properly care for him; failed to properly monitor him; failing to properly screen, hire, train, supervise, and discipline persons under their supervision and control whose acts and omissions contributed to Plaintiff Wilson's injuries; and in inflicting physical injury and severe emotional suffering upon him. They are therefore liable to Mr. Wilson, as described herein.

Count 7: Respondeat Superior Liability
(Defendants Gautreaux and the Parish)

201. Mr. Wilson repeats and re-alleges each and every allegation of the Complaint.

202. At all relevant times, the individually named and not yet named defendants were acting in the course and scope of their employment with the EBRSO or the Parish, Defendants **Gautreaux**, and **the Parish** are therefore liable under the doctrine of respondeat superior for the actions and inactions of the individual defendants, as described herein.

Count 8: Direct Action Against Insurer(s)

203. Mr. Wilson repeats and re-alleges each and every allegation of the Complaint.

204. At all applicable times, defendants, **ABC Insurance Companies**, afforded liability insurance coverage to the **Parish, EBRSO, DOC** and/or other defendants. Accordingly, **ABC Insurance Companies**, are liable to Mr. Wilson for the intentional and/or negligent acts of the other defendants.

205. Defendants are liable individually and jointly (in solido) for their actions as alleged herein. Mr. Wilson further alleges that the above-described actions and omissions by the Defendants were the proximate cause and cause in fact of the injuries he sustained.

DAMAGES

206. As a result of the actions of the Defendants as described above, Mr. Wilson suffered and continues to suffer with severe and conscious physical, mental, and emotional distress, pain and suffering.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays that this Honorable Court grant the following relief:

1. Declare Defendants' conduct unlawful;
2. Enjoin Defendants from taking other adverse actions against Mr. Wilson;
3. Require Defendants to provide Mr. Wilson access to medical care, services, and equipment to treat his current medical conditions;
4. Award compensatory, punitive, and all damages as prayed for herein;
5. Award reasonable attorneys' fees and costs;

6. Trial by jury; and
7. All other relief as appears just and proper to this Honorable Court.

Respectfully Submitted,

/s/ Emily H. Posner

Emily H. Posner (La. Bar No. 35284)
7214 St. Charles Box 913
New Orleans, Louisiana 70118
Phone: (207) 930-5232
emilyposnerlaw@gmail.com

Attorney for Plaintiff Wilson