

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**THOMAS REMICK, NADIYAH WALKER,
JAY DIAZ, MICHAEL ALEJANDRO,
MICHAEL DANTZLER, ROBERT
HINTON, JOSEPH WEISS, JOSEPH
SKINNER, SADDAM ABDULLAH, and
JAMES BETHEA, on behalf of themselves
and all others similarly situated,**

Plaintiffs-Petitioners,

v.

**CITY OF PHILADELPHIA; and BLANCHE
CARNEY, in her official capacity as
Commissioner of Prisons,**

Defendants-Respondents.

Case No.

2:20-CV-1959

Filed Via ECF

PLAINTIFFS-PETITIONERS' MOTION FOR CLASS CERTIFICATION

Plaintiffs Thomas Remick, Nadiyah Walker, Jay Diaz, Michael Alejandro, Michael Dantzler, Robert Hinton, Joseph Weiss, Joseph Skinner, Saddam Abdullah, and James Bethea, by and through their undersigned counsel, respectfully move this Court pursuant to Federal Rule of Civil Procedure 23 to enter an order certifying the proposed class (the "Class") and subclasses (the "Subclasses") identified in their Complaint and further described below.

1. Because the current conditions of confinement within the Philadelphia Department of Prisons ("PDP") facilities create an unreasonable risk of contracting COVID-19 that may result in substantial risk of severe illness or death, and because PDP is currently holding Plaintiffs in inhumane conditions of confinement, Plaintiffs seek to represent a Class for declaratory and injunctive relief of all people held in custody within PDP, including two Subclasses: (1) persons

who, by reason of age or medical condition, are particularly vulnerable to injury or death if they were to contract COVID-19 (“Medically-Vulnerable Subclass”), and (2) persons who, by reason of their disability, are particularly vulnerable to injury or death if they were to contract COVID-19 (“Disability Subclass”).

2. All Plaintiffs represent the Medically-Vulnerable Subclass, which is defined as:

All current and future persons in the custody of the Philadelphia Department of Prisons who are 55 or older, as well as all current and future persons held of any age who have a medical condition that places them at increased risk of COVID-19 illness, injury, or death, including but not limited to: (a) lung disease, including asthma, chronic obstructive pulmonary disease (*e.g.* bronchitis or emphysema), or other chronic conditions associated with impaired lung function; (b) heart disease, such as congenital heart disease, congestive heart failure, or coronary artery disease; (c) chronic liver or kidney disease (including hepatitis and dialysis patients); (d) diabetes or other endocrine disorders; (e) epilepsy; (f) hypertension; (g) compromised immune systems (such as from cancer, HIV, receipt of an organ or bone marrow transplant, as a side effect of medication, or other autoimmune disease); (h) blood disorders (including sickle cell disease); (i) inherited metabolic disorders; (j) history of stroke; (k) a developmental disability; and/or (l) a current or recent (last two weeks) pregnancy.

3. All Plaintiffs represent the Disability Subclass, which is defined as:

All current and future persons in the custody of the Philadelphia Department of Prisons who have an impairment that substantially limits one or more of their major life activities and who are at increased risk of COVID-19 illness, injury, or death due to their disability or any medical treatment necessary to treat their disability, including but not limited to those who have: (a) lung disease, including asthma, chronic obstructive pulmonary disease (*e.g.* bronchitis or emphysema), or other chronic conditions associated with impaired lung function; (b) heart disease, such as congenital heart disease, congestive heart failure, or coronary artery disease; (c) chronic liver or kidney disease (including hepatitis and dialysis patients); (d) diabetes or other endocrine disorders; (e) epilepsy; (f) hypertension; (g) compromised immune systems (such as from cancer, HIV, receipt of an organ or bone marrow transplant, as a side effect of medication, or other autoimmune disease); (h) blood disorders and/or (i) developmental disability.

4. This case satisfies all of the prerequisites for maintaining a class action under Rule 23, which include:

One or more members of a class may sue or be sued as representative parties on behalf of all members only if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a)–(b).

5. *First*, joinder is impracticable because the Class and Subclasses are numerous; they include unidentifiable future members; and the members of the Class and Subclasses are incarcerated, rendering their ability to institute individual lawsuits limited. While there is “[n]o minimum number of plaintiffs [that] is required to maintain a suit as a class action[,] generally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met.” *Stewart v. Abraham*, 275 F.3d 220, 226–27 (3d Cir. 2001). The numerosity requirement is easily satisfied here. Currently there are approximately 3,900 individuals held in the custody of PDP. The information as to the exact size of the Class and Subclasses, and the identity of those individuals, are in the exclusive control of the Defendants. However, while the current class size of individuals who are 55 or over or who have certain medical conditions is not exactly known currently, prison populations tend to have high proportions of individuals with chronic medical conditions, and the number of individuals in the custody of PDP that would qualify for the proposed classes would exceed 40 individuals. Furthermore, joinder among this many individuals, as well as the attendant challenges in bringing joint cases among a transient population, would be impractical. Thus, Plaintiffs have satisfied the numerosity requirement of Rule 23(a)(1). *See, e.g., Williams v. City of Philadelphia*, 270 F.R.D. 208, 222 (E.D. Pa. 2010) (collecting cases showing that “Rule 23(b)(2) is an appropriate vehicle

in actions challenging prison conditions”); *Death Row Prisoners of Pa. v. Ridge*, 169 F.R.D. 618, 621 (E.D. Pa. 1996) (finding 185 detainees satisfied numerosity).

6. **Second**, common questions of law and fact exist as to all members of the proposed Class and Subclasses. Injunctive actions like this one, “by their very nature, often present common questions satisfying Rule 23(a)(2) . . . because they do not [] involve an individualized inquiry for the determination of damage awards.” *Baby Neal for & by Kanter v. Casey*, 43 F.3d 48, 57 (3d Cir. 1994) (internal citation omitted). Here, the proposed Class members are all individuals held in custody at PDP facilities. They are all subject to the policies and practices promulgated by PDP and implemented within those facilities, and they all have the right to receive adequate COVID-19 prevention, testing, and treatment, and to be held in humane conditions of confinement. Because of these circumstances, common questions of fact and law to the Class include, among other things, whether PDP’s facilities are properly equipped to house all Class members safely and quarantine all Class members who exhibit symptoms for COVID-19; whether denial of adequate testing, cleaning supplies, and the right to practice social distancing in accordance with CDC guidelines will cause injury to the Class members, including unnecessary pain and suffering, and even death; and whether PDP’s current practices and procedures violate the Fourteenth Amendment, the Eighth Amendment, and the Americans with Disabilities Act. Plaintiffs have satisfied the commonality requirement of Rule 23(a)(2). *See, e.g., id.* at 56 (“[B]ecause the [commonality] requirement may be satisfied by a single common issue, it is easily met[.]”).

7. **Third**, Plaintiffs’ claims are typical of the members of the Class and Subclasses. Courts have found typicality so long as the named plaintiffs’ “claim arises from the same event or practice or course of conduct that gives rise to claims of the class members, and if it is based on the same legal theory.” *Clarke v. Lane*, 267 F.R.D. 180, 197 (E.D. Pa. 2010) (quoting *Beck v.*

Maximus, Inc., 457 F.3d 291, 296 (3d Cir. 2006)). Plaintiffs and all Class members here are injured by the same wrongful acts, omissions, policies, and practices of Defendants as described in the Complaint. For example, Plaintiffs allege that Defendants fail to provide sufficient access to cleaning supplies, soap, and hand sanitizer; that Defendants fail to enforce social distancing and Plaintiffs are commonly housed in a cell with another individual or in dorms, or use communal phones, that do not permit adequate social distancing; that Defendants do not adequately isolate or test individuals that have COVID-19 symptoms; that Defendants keep Plaintiffs in near-constant lockdown conditions that also prevent people from showering on a regular basis; that correctional officers employed by Defendants do not consistently wear masks when interacting with those who are incarcerated; among other things. Because Plaintiffs' claims arise from PDP's same practices and courses of conduct that give rise to the claims of all Class members, and because they are based on the same legal theories, Plaintiffs have satisfied the typicality requirement of Rule 23(a)(3). *See, e.g., id.* at 197 (finding typicality met when all putative class members suffered "constitutional violations under a uniform system").

8. **Fourth**, Plaintiffs Remick, Walker, Diaz, Alejandro, Dantzler, Hinton, Weiss, Skinner, Abdullah, and Bethea have the requisite personal interest in the outcome of this action to satisfy Rule 23 and will fairly and adequately protect the interests of the Class. *See New Directions Treatment Servs. v. City of Reading*, 490 F.3d 293, 313 (3d Cir. 2007). Plaintiffs do not have interests that are adverse to the interests of the proposed Class. Rather, Plaintiffs' interests directly coincide with those of Class members to seek declaratory and injunctive relief to require Defendants to comply with recommended safety and health measures to prevent the spread of the virus for those confined within PDP's facilities, and to release certain individuals at heightened risk of severe illness or death from COVID-19.

9. In addition, Plaintiffs are also represented by public interest law organizations and law firms that have decades of experience of both civil rights and prison litigation experience, including litigation relating to the Philadelphia Prisons, as well as extensive class action litigation experience. These include the Pennsylvania Institutional Law Project, the ACLU of Pennsylvania, Kairys, Rudovsky, Messing, Feinberg & Lin LLP, and Dechert LLP. Counsel for Plaintiffs know of no conflicts among proposed Class members or between counsel and proposed Class members. Accordingly, Plaintiffs have satisfied the adequacy requirement of Rule 23(a)(4). *See, e.g., Williams*, 270 F.R.D. at 216 (finding that counsel for the class were qualified to prosecute the action and that named plaintiffs “fairly and adequately protect the interests of the class” because there were no “unique defenses that would consume a disproportionate amount of time and attention”).

10. **Finally**, Defendants have acted on grounds generally applicable to all proposed members of the Class and Subclasses, and this action seeks declaratory and injunctive relief. Plaintiffs therefore seek class certification under Rule 23(b)(2), which is especially appropriate for prisoners’ civil rights actions like this one because of the potential for common resolution through declaratory and injunctive relief. *See id.* at 222 (“Numerous courts have held that Rule 23(b)(2) is an appropriate vehicle in actions challenging prison conditions.”). Indeed, the Third Circuit has a long history of using Rule 23(b)(2) to adjudicate claims involving treatment of prisoners. *See, e.g., id.* (certifying Rule 23(b)(2) class of inmates); *see also Death Row Prisoners of Pa.*, 169 F.R.D. at 623 (certifying Rule 23(b)(2) class of death-row detainees).

Therefore, because Defendants’ actions and policies apply generally to all members of the Class and Subclasses who seek declaratory and injunctive relief, Plaintiffs meet the requirements

of Rule 23(b)(2), and the Court should grant Plaintiffs' Motion and certify the Class and Subclasses.

Respectfully submitted,

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DATE: April 20, 2020

CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to all attorneys of record.

Dated: April 20, 2020

s/ Nicolas A. Novy

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**[PROPOSED] ORDER GRANTING PLAINTIFFS-PETITIONERS’
MOTION FOR CLASS CERTIFICATION**

WHEREAS, the Court having reviewed and considered Plaintiffs’ Motion for Class Certification and any supporting and opposing materials filed by counsel,

IT IS THIS ____ DAY OF _____ 2020

ORDERED that Plaintiffs’ Motion for Class Certification is **GRANTED**.

Plaintiffs Thomas Remick, Nadiyah Walker, Jay Diaz, Michael Alejandro, Michael Dantzler, Robert Hinton, Joseph Weiss, Joseph Skinner, Saddam Abdullah, and James Bethea are hereby certified as class representatives for the Class and Subclasses as defined in Plaintiffs’ Motion.

DATED: _____, 2020

HON. _____
UNITED STATES DISTRICT JUDGE