UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHARLES RUSSELL; CHRISTOPHER HUBBARD;; HARRY WHITE; CARL SMELLEY; SHANE CARLINE; and COURTNEY WHITE, individually and on behalf of all others similarly situated, Plaintiffs, v. WAYNE COUNTY, MICHIGAN; BENNY NAPOLEON, in his official capacity as Sheriff of Oakland County; DANIEL PFANNES, in his official capacity as the Undersheriff for the Wayne County Sheriff's Office; ROBERT DUNLAP, in his official capacity as Chief of Jails and Court Operations; JAMES E. DAVIS, in his official capacity as Deputy Chief of Jail Operations,	Case No. 2:20-cv-11094-MAG-EAS

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

For the reasons set forth in Plaintiffs' Brief in Support of Motion for Class Certification, attached below, Plaintiffs request that this Court certify a class, pursuant to Federal Rule of Civil Procedure 23(b)(2), as well as three subclasses. This class action seeks declaratory and injunctive relief to require Defendants to

implement procedures that provide basic, reasonable protective measures and medical care for Plaintiffs to keep them reasonably healthy and safe from contracting the novel coronavirus and its resulting disease, COVID-19, while in custody. It also seeks a writ of habeas corpus ordering the immediate release of certain people with underlying medical conditions (constituting one of the subclasses) making them so vulnerable to COVID-19 that no procedures could be implemented fast or successfully enough to protect them.

Plaintiffs, therefore, seek to certify one class with three subclasses as follows:

- The Class ("the Jail Class") is defined as: "All current and future persons detained at the Wayne County Jail during the course of the COVID-19 pandemic."
- The "Pre-trial Subclass" is defined as: "All members of the Jail Class who have not yet been convicted of the offense for which they are currently held in the Jail."
- The "Post-conviction Subclass" is defined as: "All members of the Jail Class who have been sentenced to serve time in the Jail or who are otherwise in the Jail as the result of an offense for which they have already been convicted."
- The "Medically Vulnerable Subclass" is defined as: "All members of the Jail Class who are also over the age of fifty, or who, regardless of age,

> experience an underlying medical condition that places them at particular risk of serious illness or death from COVID-19, 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, and 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."

Plaintiffs further request (1) that Charles Russell, Christopher Hubbard, Harry White, Carl Smelley, CalDerone Pearson, Shane Carline, and Courtney White are appointed as Class Representatives for the Jail Class; (2) that Christopher Hubbard and Shane Carline are appointed as Class Representatives for the Pre-trial Class; (3) that Harry White, CalDerone Pearson, and Courtney White are also appointed as Class Representatives for the Post-conviction Class; and (4)

that Charles Russell, Christopher Hubbard, Harry White, Carl Smelley, and Courtney White are also appointed as Class Representatives for the Medically Vulnerable Class.

Plaintiffs further request that their undersigned attorneys be appointed as class counsel pursuant to Federal Rule of Civil Procedure 23(g).

Local Rule 7.1(a) requires Plaintiffs to ascertain whether this motion will be opposed. Because this motion is being filed contemporaneously with the complaint, there is not yet an attorney of record for Defendants in this case. Plaintiffs' counsel emailed and left a voicemail with the Wayne County Corporation Counsel's office and the Wayne County Sheriff's Office counsel to explain the nature of this motion and its legal basis. Plaintiffs' counsel was unable to reach Wayne County Corporation Counsel. David Melton, on behalf of the Wayne County Sheriff's Office, indicated that he does not concur in the motion.

Dated: May 4, 2020 Respectfully Submitted,

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PLAINTIFFS' BRIEF IN SUPPORT
OF MOTION FOR CLASS CERTIFICATION

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INTRODUCTION

This case is about Defendants' failure to protect the people detained under their custody in the Wayne County Jail ("the Jail") from the novel coronavirus and its resulting disease, COVID-19. Defendants have failed to respond adequately to the urgent threat posed to people confined in the Jail during this growing and lethal pandemic, making it impossible for the incarcerated class members to observe the precautionary steps necessary to keep themselves safe, such as social distancing, increased personal hygiene, sanitizing one's environment, access to testing and other essential healthcare treatment, and wearing protective clothing.

As a result of Defendants' failure to protect the incarcerated class members and disregard of the known risks of illness and death, detainees in the Jail have been exposed to a highly fatal infectious disease in violation of their constitutional rights under the Eighth and Fourteenth Amendments. At least 13 inmates have already contracted the disease, and research suggests that this number will increase exponentially in the coming weeks. *See* Compl. ¶ 4, 11. Named Plaintiffs challenge these unconstitutional conditions and now move for class certification under Federal Rule of Civil Procedure 23(a) and (b)(2). Named Plaintiffs also move for appointment of the undersigned as class counsel pursuant to Rule 23(g).

Class certification is warranted because Plaintiffs seek declaratory and injunctive relief to address the unconstitutional conditions that prevail throughout

the Jail. These conditions pose similar health risks to Plaintiffs and all putative class members by exposing them all (as well as Jail staff and the public at large) to a serious risk of infection and, as a result, serious and potentially lasting bodily harm—up to and including death. Resolving Plaintiffs' claims requires answering the same common questions of law and fact by finding that the conditions in the Jail violate the Eighth and Fourteenth Amendments to the U.S. Constitution.[1] A declaratory judgment and injunction for the entire class will address these issues for all class members. The size and nature of the Jail means that there are far too many class members, and the class and subclasses are too fluid, to efficiently resolve these questions individually.

The Named Plaintiffs and their counsel are dedicated to vindicating the constitutional rights of the proposed class members, even if the Named Plaintiffs' cases are resolved through their release or otherwise. Counsel will provide quality representation for the interests of proposed class members—just as they have for other similar classes of incarcerated people in Michigan and around the nation.

[1] As explained in more detail in Plaintiffs' Complaint and Brief in Support of Emergency Motion for Temporary Restraining Order and Preliminary Injunction, the constitutional standard with respect to the Pre-trial Subclass is governed by the Fourteenth Amendment rather than the Eighth Amendment. Accordingly, that subclass need only prove that the medical need is objectively serious and the Jail's response inadequate. *See Hopper v. Phil Plummer*, 887 F.3d 744, 754 (6th Cir. 2018).

BACKGROUND AND FACTS

I. All Plaintiffs and Putative Class Members Are Being Detained in Extraordinarily Unsafe Conditions that Cannot Protect Them From this Global Pandemic.

Comprising three buildings through which Plaintiffs and staff constantly traverse, the Jail is a ticking time bomb—the conditions inside the Jail create a breeding ground for a mass outbreak of the COVID-19 virus.

Division I (the "New Jail") and Division II (the "Old Jail") house over 600 detainees, many of whom are members of the Pre-Trial Subclass. Members of this Subclass consistently travel back and forth between Division I, Division II, and the Wayne County Third Circuit Court for arraignment and other pre-trial proceedings. Division III (the "Dickerson Facility") houses over 430 detainees, and many of these men are part of the Post-Trial Subclass. Some members of this Subclass are serving work release sentences, and they leave and return to the Jail each day and night. TRO Ex. #1 (C. White Decl.) ¶ 11. The laundry services for all three Divisions occurs in Division III. TRO Ex. #2 (Malec Decl.) ¶ 3.

The Jail therefore presents numerous opportunities for the virus to spread exponentially amongst the incarcerated or detained class members and other individuals who work in or visit the Jail. Yet Defendants have failed to implement proper screening, testing, or quarantine processes for those detainees who travel between Divisions or visit from outside the Jail. *See* TRO Ex. #1 ¶ 1; TRO Ex. #4

(Kelly Decl.) ¶¶ 4-7, 10, 17-18; TRO Ex. #5 (Carline Decl.) ¶ 14; TRO Ex. #6 (Smelley Decl.) ¶ 15.

Necessary social distancing is impossible inside the Jail. The jail cells contain bunk beds, forcing up to four class members to sleep less than three feet apart from each other in each cell. TRO Ex. #1 ¶ 3; TRO Ex. #2 (Mathews Decl.) ¶ 6; TRO Ex. #3 (Nickel Decl.) ¶ 5. Due to the limited number of benches in the common areas, class members eat and congregate just a few feet away from one another throughout the day. TRO Ex. #1 ¶¶ 3, 5; TRO Ex. #2 ¶ 8; TRO Ex. #6 ¶ 6; TRO Ex. #3 ¶ 6. Members of the Class and Subclasses—including, specifically, the Medically Vulnerable Subclass—therefore remain in close contact with other class members at all times during their confinement in the Jail. TRO Ex. #2 ¶ 3.

Toilets, sinks, showers, tablets, and phones are shared without disinfection between each use. TRO Ex. #1 ¶ 3; TRO Ex. #6 ¶¶ 6, 8-10; TRO Ex. #3 ¶ 6. Defendants provide Plaintiffs and the putative class members with only small, hotel-sized bars of soap that are insufficient for the routine handwashing and cleaning necessary to mitigate the spread of COVID-19; they do not provide Jail detainees with any other hygiene or personal sanitation supplies free of charge. TRO Ex. #5 ¶ 11; TRO Ex. #6 ¶ 11; TRO Ex. #3 ¶ 10; TRO Ex. #10 (Hubbard Decl.) ¶¶ 4, 6, 8. Detainees must use the same bars of soap to wash their hands, bodies, and clothing. *Id.* To clean their spaces, Defendants provide Plaintiffs with Simple Green—which

is ineffective against viruses such as COVID-19[2]—and there is no other way for incarcerated people to keep their cells or the filthy shared toilets and showers clean and hygienic. TRO Ex. #4 ¶ 30; TRO Ex. #5 ¶ 9. Cloth masks are only occasionally provided to detainees and are not regularly replaced. TRO Ex. #1 ¶ 9. None of the Plaintiffs have been provided gloves. *See, e.g.*, TRO Ex. #2 ¶ 11; TRO Ex. #10 ¶ 9.

Worse yet, Defendants have largely ignored the spread of COVID-19 within the Jail. Indeed, deputies and other Jail staff routinely ignore and dismiss sick inmates' requests for medical attention and even discipline people who raise concerns about the disease. TRO Ex. #2 ¶ 11; TRO Ex. #3 ¶ 2, 4; TRO Ex. #5 ¶ 15; TRO Ex. #6 ¶¶ 3-4; TRO Ex. #10 ¶ 10; TRO Ex. #13 (Velez Decl.) ¶ 4. Even though two Jail deputies have died from COVID-19 and nearly 180 employees from the Wayne County Sheriff's Office have tested positive, jail staff inconsistently wear personal protective equipment like gloves or masks when interacting with Plaintiffs. TRO Ex. #1 ¶ 9; TRO Ex. #4 ¶ 32; TRO Ex. #5 ¶ 11; TRO Ex. #6 ¶ 14.

Defendants do not promptly nor properly test or treat people exhibiting

[2] *See* Simple Green, "Coronavirus Frequently Asked Questions," https://simplegreen.com/news-and-media/coronavirus-faq/ (last visited May 1, 2020) (explaining that Simple Green "is not a disinfectant and will not kill bacteria or viruses"). The CDC has not identified Simple Green as one of the EPA-registered disinfectants effective against the virus in its Interim Guidance on Management of Coronavirus in Correctional and Detention Facilities. *See* Compl. Ex. #7 at 7, 9, 18.

COVID-19 symptoms, and instead keep them in daily contact with others in general population. TRO Ex. #1 ¶ 10, 12-13; TRO Ex. #2 ¶¶ 4-5; TRO Ex. #3 ¶ 3; TRO Ex. #5 ¶ 17; TRO Ex. #6 ¶ 3.

II. Plaintiffs Seek Class-Wide Prospective Relief.

The Jail's policies and practices violate the rights of all class members to be free from cruel and unusual punishment and the resulting rights, once detained, to be held in a facility that does not present an egregious medical hazard. *See DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 200 (1989) ("[W]hen the State . . . restrains an individual's liberty . . . [and] fails to provide for his basic human needs—e.g., food, clothing, shelter, medical care, and reasonable safety—it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause.").

Plaintiffs seek class-wide declaratory and injunctive relief holding unconstitutional the conditions under which the entire class is detained and ordering that those conditions be immediately and drastically improved. In the case of the Medically Vulnerable Subclass, given the immediate and severe health risks posed by the Jail's conditions—conditions that cannot be abated rapidly or starkly enough to protect these high-risk individuals—Plaintiffs seek subclass-wide relief in the form of immediate release.

ARGUMENT

Under Rule 23 of the Federal Rules of Civil Procedure, the party seeking class certification must show that:

(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 named parties are typical of the claims or defenses of the class; and

(4) the named parties will fairly and adequately protect the interest of the class.

Fed. R. Civ. P. 23(a). The class must also satisfy the requirements of Rule 23(b)(2), that "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." *See infra* Section V.

Although the Court must perform a "rigorous analysis" to determine whether to certify a class, *Wal-Mart v. Dukes*, 564 U.S. 338, 351 (2011), the Court may not require Plaintiffs to prove their claims at the class certification stage. *See Amgen Inc. v. Conn. Retirement Plans & Trust Funds*, 568 U.S. 455, 466 (2013) ("Merits questions may be considered . . . only to the extent . . . that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied."). At the certification stage, Plaintiffs' evidence need only demonstrate that Rule 23 itself is satisfied; certification is not a "dress rehearsal for the trial on the merits." *In*

re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig., 722 F.3d 838, 851–52 (6th Cir. 2013) (internal quotations and citation omitted). Moreover, "it is not always necessary . . . to probe behind the pleadings before coming to rest on the certification question, because sometimes there may be no disputed factual and legal issues that strongly influence the wisdom of class treatment." *Gooch v. Life Investors Ins. Co. of Am.*, 672 F.3d 402, 417 (6th Cir. 2012) (internal quotations and citation omitted).

Class certification is particularly favored when, as here, the Named Plaintiffs assert civil rights claims that are of a fleeting or transitory nature, such that mootness concerns would make it difficult or impossible for individuals to litigate the issues outside of the class context. *See Johnson v. City of Opelousas*, 658 F.2d 1065, 1070 (5th Cir. 1981) ("[W]e believe that the substantial risk of mootness presented by the facts of this dispute was sufficient to create a need for certification."); *see also Penland v. Warren Cty. Jail*, 797 F.2d 332 (6th Cir. 1986) (citing *Johnson* with approval); *Cmtys. for Equity v. Mich. High Sch. Athletic Ass'n*, 192 F.R.D. 568, 575 (W.D. Mich. 1999). Indeed, given the "short term nature of incarceration in a county jail," a class should be certified because it is the "only vehicle whereby the legality of [a jail's] operation can be determined." *Hiatt v. Adams Cty.*, 155 F.R.D. 605, 608–09 (S.D. Ohio 1994).

I. The Proposed Class Is So Numerous That Joinder of All Proposed

Class Members Is Impracticable.

Plaintiffs' proposed class is sufficiently numerous to make joinder impracticable. *See* Fed. R. Civ. P. 23(a)(1). Although there is no strict numerical test, "substantial" numbers usually satisfy the numerosity requirement. *Daffin v. Ford Motor Co.*, 458 F.3d 549, 552 (6th Cir. 2006). Courts generally find that "a class of 40 or more members is sufficient to satisfy the numerosity requirement." *Garner Properties & Mgmt., LLC v. City of Inkster*, 333 F.R.D. 614, 622 (E.D. Mich. 2020); *see also Afro Am. Patrolmen's League v. Duck*, 503 F.2d 294, 298 (6th Cir. 1974) (affirming certification of class of 35 plaintiffs). Where plaintiffs can show that the number of potential class members is large, the numerosity requirement is met "even if plaintiffs do not know the exact figure." *In re Consumers Power Co. Sec. Litig.*, 105 F.R.D. 583, 601 (E.D. Mich. 1985). Courts should also consider "judicial economy arising from the avoidance of a multiplicity of actions." *Newberg on Class Actions* § 3:12 (5th ed.); *see Calloway*, 287 F.R.D. at 406.

The proposed class easily meets the Rule 23(a)(1) numerosity requirement. According to recent reporting, the Jail population currently stands at approximately 834 human beings.[3] And approximately 50% of all people incarcerated in

[3] *See* Ross Jones, *Huge Disparity Among Local Jails Testing for COVID-19*, ABC7 WXYZ (Apr. 30, 2020), *available at* https://www.wxyz.com/news/local-news/investigations/huge-disparity-among-local-jails-testing-for-covid-19.

Michigan's jails are pre-trial detainees,[4] meaning that the Pre-Trial Subclass and the Post-Conviction Subclass each constitute approximately half of the class as whole.

As to the Medically Vulnerable Subclass, although its exact size cannot be known in advance, demographic data of jail populations more generally confirms that well over 30% of detained individuals typically suffer from conditions that render them medically vulnerable to the coronavirus.[5] Several of the Named Plaintiffs, for example, fall within this category. *See, e.g.*, TRO Ex. #1 ¶¶ 2, 5; TRO Ex. #5 ¶ 18; TRO Ex. #9 ¶¶ 2-3. Based on these demographics alone, it is safe to estimate that the Medically Vulnerable Subclass would number well over one hundred individuals within this over 800 person population.

The Jail class—and thus each of the subclasses—will continue to grow as law enforcement officers continue to arrest and detain individuals from the community during this extended health pandemic. In April 2020 alone, Detroit police officers made over 2,500 arrests.[6] The resulting class easily exceeds 1,000 people and the

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[4] *See* Michigan Joint Task Force on Jail and Pretrial Incarceration, *Report and Recommendations*, p. 7 (Jan. 10, 2020), available at https://courts.michigan.gov/News-Events/Documents/final/Jails%20Task%20Force%20Final%20Report%20and%20Recommendations.pdf.

[5] *See* Peter Wagner & Emily Widra, *No Need to Wait for Pandemics: The Public Health Case for Criminal Justice Reform*, Prison Policy Initiative (Mar. 6, 2020), www.prisonpolicy.org/blog/2020/03/06/pandemic/.

[6] *See* Franke W, *DET04_08*, Tableau Public (Apr. 23, 2020), https://public.tableau.com/profile/frankie.w7674#!/vizhome/DET0408/Dashboard1

subclasses number in the hundreds. Because the number of potential plaintiffs in the proposed class and subclasses vastly exceeds the number who could be joined practicably, Rule 23(a)(1) is satisfied here.

II. Claims by The Proposed Class Raise Common Questions That Will Generate Common Answers.

The claims asserted on behalf of the proposed class include common questions of law and fact that satisfy Rule 23(a)(2). Commonality requires that the class members' claims "depend on a common contention" of fact *or* law such that "determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Dukes*, 564 U.S. at 350. Courts must "start from the premise that there need be only one common question to certify a class." *Whirlpool*, 722 F.3d at 853. Courts find common questions of both law and fact "at a high level of generality." *Newberg on Class Actions* § 3:19 (5th ed.) (internal quotations and citation omitted).

Commonality also requires that these common questions "generate common *answers* apt to drive the resolution of the litigation." *Dukes*, 564 U.S. at 349 (quoting Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. Rev. 97, 132 (2009) (emphasis in original)). These "common answers" must "relate[] to the actual theory of liability in the case." *Rikos v. Procter & Gamble*

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Co., 799 F.3d 497, 505 (6th Cir. 2015); *see also Cmtys. for Equity*, 192 F.R.D. at 572; *Newberg on Class Actions* § 3:20 (5th ed.) ("When the party opposing the class has engaged in some course of conduct that affects a group of persons and gives rise to a cause of action, one or more of the elements of that cause of action will be common to all of the persons affected.").

Accordingly, courts in the Sixth Circuit have repeatedly certified class actions in which incarcerated people challenge the circumstances or conditions of their detention. *See Brown v. City of Detroit*, No. 10–12162, 2012 WL 4470433, at *13 (E.D. Mich. Sept. 27, 2012) (certifying class of detainees challenging their detention for more than 48 hours without probable cause); *Smith v. Ohio Dep't of Rehab. & Corr.*, No. 2:08–CV–15, 2012 WL 1440254, at *4 (S.D. Ohio April 26, 2012) (class of prisoners suffering exposure to high levels of asbestos); *Hiatt*, 155 F.R.D. at 609 (finding commonality satisfied where "[t]he conditions, policies and practices challenged" in the carceral setting impacted all detained people); *Allen v. Leis*, 204 F.R.D. 401 (S.D. Ohio 2001) (class of detainees challenging payments associated with their detention); *Gorton v. Johnson*, 100 F.R.D. 801 (E.D. Mich. 1984) (class of incarcerated people challenging mental health treatment provided to them); *Glover v. Johnson*, 85 F.R.D. 1, 5-6 (E.D. Mich. 1977) (class of female prisoners who challenged the Michigan Department of Corrections' unconstitutional policies in providing women with inferior educational and vocational programs).

At the core of this case is the common set of facts inflicting constitutional injury on each member of the proposed class: namely, the unsafe and unhygienic conditions prevailing in the Jail and the concomitant risks of contracting COVID-19 created by those conditions. All class members suffer the same injury, namely an unconstitutional risk of exposure to an extraordinarily dangerous disease that in some cases leads to actual contraction of and/or complications from the disease itself. And all members of the Medically Vulnerable Subclass share a greatly elevated risk of suffering death or permanent organ damage or failure should they contract the virus.

These injuries are "*capable* of classwide resolution," *Rikos*, 799 F.3d at 505 (quoting *Dukes*, 564 U.S. at 350), because the Court can issue a single declaration finding that the conditions in the Jail are in violation of the Eigth and Fourteenth Amendments and ordering immediate remedies to address the conditions. And a single additional remedy mandating release of the Medically Vulnerable Subclass can address the increased risk to the subclass. Thus, this case goes far beyond the "single common question [that] will do." *Dukes*, 564 U.S. at 359 (internal quotations and citation omitted). Indeed, *most* questions of fact and law that will arise in this suit are common across the class. Among the most central common questions of fact are:

- What measures Defendants implemented in the Jail in response to the COVID-19 crisis;

- Whether the conditions in the Jail are sufficient to prevent an unreasonable risk of the spread of COVID-19;

- Whether Defendants' practices during the COVID-19 pandemic expose detainees at the Jail to a substantial risk of serious harm;

- Whether Defendants knew of and disregarded a substantial risk of serious harm to the health and safety of the class and subclasses; and

- Whether COVID-19 presents a heightened risk of harm and potential death to the Medically Vulnerable Subclass.

Among the most important common questions of law are:

- As to the entire class: whether the conditions in which the class is confined are objectively unreasonable given the health risks to class members.[7]

- As to the Pre-Trial Subclass: whether Defendants are liable under the Fourteenth Amendment for the objectively unreasonable conditions of confinement that are very likely to cause serious illness and needless suffering.

- As to the Post-Conviction Subclass: whether Defendants are liable under the Eighth Amendment for their deliberate indifference to conditions of confinement that are very likely to cause serious illness and needless suffering.

- As to the Medically Vulnerable Subclass: whether the threat of death,

[7] As explained in footnote 1, *supra*, and in the Memorandum in Support of Plaintiffs' Emergency Motion for Temporary Restraining Order, the Eighth Amendment governs the constitutionality of the terms of confinement for people who have been convicted, whereas the Fourteenth Amendment governs the constitutionality of the terms of confinement for people still awaiting trial. To find an Eighth Amendment violation as to the Post-Conviction Subclass, this Court must find both that the conditions in the Jail are objectively unreasonable and that the Jail was subjectively aware of and disregarded the risks. To find a Fourteenth Amendment violation as to the Pre-Trial Subclass, the objective unreasonableness component of the inquiry is all that applies and is common to all subclasses. *See* Compl. ¶¶ 129-134; TRO Br. at 26-27.

> pain, or permanent severe injury to members of the subclass is so constitutionally impermissible and irredressable that the only adequate remedy is to release them from custody immediately.

In short, common questions of fact and law pervade this case, satisfying the Rule 23(a)(2) commonality requirement.

III. The Named Plaintiffs' Claims Are Typical of the Claims of the Proposed Class.

The Plaintiffs in this case have claims typical of all members of the class, *i.e.*, of all the people incarcerated in the Jail. To meet the typicality requirement, the Named Plaintiffs' claims must be "typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "The commonality and typicality requirements of Rule 23(a) tend to merge." *Dukes*, 564 U.S. at 349 n.5. "Like the test for commonality, the test for typicality is not demanding and the interests and claims of the various plaintiffs need not be identical." *Reese v. CNH Am., LLC*, 227 F.R.D. 483, 487 (E.D. Mich. 2005).

"A claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members, and if [the] claims are based on the same legal theory." *Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 561 (6th Cir. 2007). So long as the class and its representatives have similar legal theories arising from the same practice or course of conduct, the requirement is met "even if substantial factual distinctions exist between the named and unnamed class members." *Rankin v. Rots*, 220 F.R.D. 511, 518 (E.D. Mich. 2004).

Courts in the Sixth Circuit have consistently found prisoners' claims to be "typical" of the class they propose to represent where those claims arise from policies or conditions at an institution affecting all members of the proposed class. In *Smith*, 2012 WL 1440254, at *5, the court found that a prisoner's claims regarding asbestos at the prison were typical of those of the class of prisoners he sought to represent because they arose "from the same events, practice or course of conduct." In *Glover*, 85 F.R.D. at 5-6, the court held that plaintiffs' claims regarding gender-based disparities in the Department of Corrections' educational policies and programs for women inmates were typical of those of the class, regardless of whether each class member was "identically situated." And in *Brown*, 2012 WL 4470433, at *12, the court held that the named plaintiff raised claims that were typical of those of the proposed class of pretrial detainees when he challenged the fact that he was detained for a substantial amount of time without bedding and for more than 48 hours without a probable cause hearing. *See also Eddleman v. Jefferson Cty.*, 96 F.3d 1448, 1996 WL 495013, at *4 (6th Cir. 1996) (unpublished) (typicality requirement met where plaintiffs challenged county jail's blanket strip search policy even though individual searches varied in scope).

In other COVID-19-related litigation, federal courts recently have found that both classes of detainees at large and medically vulnerable subclasses have satisfied Rule 23(a)'s typicality requirement. *See, e.g.*, *Mays v. Dart*, No. 20 C 2134, 2020

WL 1987007, at *18 (N.D. Ill. Apr. 27, 2020) ("Typicality is satisfied for subclass A because the named plaintiffs have alleged the same injurious conduct stemming from the Sheriff's response to the coronavirus pandemic as the other members of the subclass and have advanced the same legal theory as the subclass at large."); *see also Savino v. Souza*, No. 20-10617-WGY, 2020 U.S. Dist. LEXIS 61775, at *21 (D. Mass. Apr. 8, 2020) ("Crucial to the Court's determination is the troubling fact that even perfectly healthy detainees are seriously threatened by COVID-19.").

All Named Plaintiffs, each class member, and each subclass member are similarly impacted by Defendants' inadequate response to the coronavirus pandemic, such that "their conditions of confinement are unconstitutional." *Mays*, 2020 WL 1987007, at *22. These conditions include detainees' inability to practice social distancing in the Jail's common areas, Jail staff's inconsistent use of masks and gloves, detainees' lack of adequate protective equipment or cleaning supplies, inadequate medical care and medical responses to COVID-19 cases, and Jail staff and work release inmates leaving and returning to the Jail each day. *See* TRO Ex. #2 ¶ 10; TRO Ex. #4 ¶¶ 22, 32; TRO Ex. #6 ¶ 8; TRO Ex. #7 (Blanks Decl.) ¶ 5-7; TRO Ex. #8 (Pearson Decl.) ¶ 6-7; TRO Ex. #12 (H. White Decl.) ¶ 3-5; Ex. A (McKay Decl.) ¶ 19.

In sum, the Named Plaintiffs' experiences mirror those of all class members and demonstrate that the harms are widespread across all types of class members.

IV. The Named Plaintiffs Are Competent and Dedicated Class Representatives.

The Named Plaintiffs also fulfill the final requirement under Rule 23(a): they "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The Sixth Circuit has articulated two criteria for adequacy of representation: "1) the representative must have common interests with unnamed members of the class[;] and 2) it must appear that the representatives will vigorously prosecute the interests of the class through qualified counsel." *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1083 (6th Cir. 1996) (internal quotations and citation omitted). "The adequate representation requirement overlaps with the typicality requirement because in the absence of typical claims, the class representative has no incentives to pursue the claims of the other class members." *Id.; see also Gasperoni v. Metabolife, Int'l Inc.*, No. 00-71255, 2000 WL 33365948, at *4 (E.D. Mich. Sept. 27, 2000) (finding that the named plaintiffs were adequate class representatives because their claims asserted the same legal issue as those of the class members).

Plaintiffs meet the first adequacy criterion for reasons set forth in the commonality and typicality discussions above. In addition, the Named Plaintiffs do not have interests that are in any way contrary to the rest of the class. They all share with the class the common goal of living in conditions that satisfy constitutional requirements. *Cf. Smith v. Ohio Dep't of Rehab. & Corr.*, No. 2:08-CV-15, 2012 WL 1440254, at *5 (S.D. Ohio Apr. 26, 2012) ("Mr. Perry shares with the Class the

common interest in safely containing and removing asbestos from CCI."). The relief they seek—declaratory and injunctive relief from unconstitutional policies and practices—would benefit the entire class equally. There are no conflicts between the Named Plaintiffs and the class.

The Named Plaintiffs are also ready and willing to take an active role in litigating this case, including by responding to discovery as needed. *Cf. Tipton v. CSX Transp., Inc.*, No. 3:15-CV-311-TAV-CCS, 2017 WL 11493745, at *13 (E.D. Tenn. July 11, 2017) (finding Rule 23(a)'s adequacy requirement satisfied where named plaintiffs were "willing to vigorously prosecute the interests of the class" and had "actively participated in discovery."). Each has met with counsel multiple times by phone (the only method of communication possible in light of the pandemic crisis), are aware of the duties and obligations that apply to representative plaintiffs in class litigation, and are committed to seeking relief on behalf of all class members.

Plaintiffs also satisfy the second adequacy criterion: adequacy of counsel. When making a determination regarding adequacy of cousel, the Sixth Circuit has explained that it "reviews the adequacy of class representation to determine whether class counsel are qualified, experienced and generally able to conduct the litigation, and to consider whether the class members have interests that are not antagonistic to one another." *Beattie*, 511 F.3d at 562-63. Plaintiffs' counsel include highly qualified and experienced civil rights, criminal defense, and civil litigation attorneys

who are able and willing to conduct this litigation on behalf of the class. Plaintiffs' counsel from the Advancement Project, LaRene & Kriger, PLC, Civil Rights Corps, Detroit Justice Center, and Venable LLP collectively have extensive experience litigating complex class action and civil rights cases, including cases concerning the constitutional rights of incarcerated people. Ex. B (Harvey Decl.) ¶¶ 3-5, 7-9; Ex. C (Kriger Decl.) ¶¶ 5-7; Ex. D (Karakatsanis Decl.) ¶¶ 4-8; Ex. E (Ferguson Decl.) ¶¶ 4-5; Ex. F (Saad Decl.) ¶¶ 2-4. As evidenced by the cited declarations and the fillings in the cases noted therein, counsel have a history of zealous advocacy on behalf of their clients. Accordingly, Plaintiffs and their counsel meet Rule 23(a)(4)'s adequacy requirement.

V. Certification of the Class for Prospective Relief is Appropriate Under Rule 23(b)(2).

Plaintiffs' proposed class is ideal for certification under Rule 23(b)(2). To certify a class under Rule 23(b)(2), the party seeking class certification must show that "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). "This is a simple inquiry in most cases." *Newberg on Class Actions* § 4:28 (5th ed.). The requirement of a generally applicable set of actions "ensures that the class's interests are related in a manner that makes aggregate litigation appropriate . . . and therefore efficient." *Id.* Thus, "Rule 23(b)(2) applies . . . when a single injunction or

declaratory judgment would provide relief to each member of the class." *Dukes*, 564 U.S. at 360.

As the Supreme Court has recognized, civil rights cases are "prime examples" of Rule 23(b)(2) class actions. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997); *see also Dukes*, 564 U.S. at 361; *Newberg on Class Actions* § 25:20 (4th ed. 2002) ("Rule 23(b)(2) was drafted specifically to facilitate relief in civil rights suits."). In actions primarily seeking injunctive relief, the (b)(2) requirement is "almost automatically satisfied." *Baby Neal ex rel. Kanter v. Casey*, 43 F.3d 48, 58 (3d Cir. 1994). "What is important is that the relief sought by the named plaintiffs should benefit the entire class." *Id*. at 59.

"Numerous courts have held that Rule 23(b)(2) is an appropriate vehicle in actions challenging prison conditions." *Williams v. City of Phila.*, 270 F.R.D. 208, 222 (E.D. Pa. 2010). Within the Sixth Circuit, many courts have certified prisoner class actions under Rule 23(b)(2) where the claims challenge conditions affecting the larger population of incarcerated people. *See, e.g.*, *Glover v. Johnson*, 85 F.R.D. 1, 7 (E.D. Mich. 1977) (granting class certification in an action regarding inequalities in the Michigan Department of Corrections' inmate treatment and educational programs); *Gorton v. Johnson*, 100 F.R.D. 801, 803-04 (E.D. Mich. 1984) (granting class certification in action regarding denial of psychiatric treatment while incarcerated); *Hiatt v. Adams Cty.*, 155 F.R.D. 605, 610 (S.D. Ohio 1994) (holding

that requirements for class certification were met in action regarding the conditions of confinement as well as the policies and practices in the Adams County Jail); *Allen v. Leis*, 204 F.R.D. 401, 409 (S.D. Ohio 2001) (granting motion for class certification in action regarding pre-trial detainees whose funds were confiscated before conviction); *Smith*, 2012 WL 1440254 (certifying a class of plaintiffs consisting of incarnated individuals in areas of correctional institution identified as containing unabated asbestos).

The class proposed here is exactly the kind of class that Rule 23(b)(2) embraces. *See id.* The class's interests are related in a manner that warrants aggregate litigation. Plaintiffs have "alleged that the policies and practices of the Defendants and the condition existing at the jail affect the class as a whole." *Hiatt*, 155 F.R.D. at 610. Specifically, Plaintiffs allege that Defendants have permitted unsafe and effectively lethal conditions to persist within the Jail, notwithstanding their awareness of that danger. Injunctive and declaratory relief are appropriate precisely because the only adequate relief requires enjoining Defendants' unconstitutional policies and practices across the board and declaring their unconstitutionality. "Indeed, the remedy sought, to be effective, must be system wide rather than individually oriented" in light of the highly contagious nature of the coronavirus. *Id.*

It is far more efficient for this Court to grant injunctive and declaratory relief

protecting the entire class than to extend that relief piecemeal through individual suits. Class certification is further necessary because of the inherently transitory nature of the constitutional harms at issue here: any individual class member's claim might become moot before it could be addressed on the merits, and new class members face the prospect of immediate harm through unconstitutional exposure to the conditions in the Jail the moment they are detained. *See Johnson*, 658 F.2d at 1070 (5th Cir. 1981); *Cmtys. for Equity*, 192 F.R.D. at 575; *Hiatt*, 155 F.R.D. at 608–09. Accordingly, this Court should certify the class under Rule 23(b)(2).

VI. Plaintiffs' Counsel Should Be Appointed Class Counsel Under Rule 23(g).

Federal Rule of Civil Procedure 23(g) requires that the court appoint class counsel for any class that is certified. Fed. R. Civ. P. 23(g)(1). Class counsel must "fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B). A court must consider factors including: (1) "the work counsel has done in identifying or investigating potential claims in this action"; (2) "counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action"; (3) "counsel's knowledge of the applicable law"; and (4) "the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A).

The undersigned counsel satisfy these requirements. First, Plaintiffs' counsel have interviewed Plaintiffs and other class members, performed relevant legal

research and drafting, and investigated the facts and legal claims raised in this case in detail, despite the significant practical obstacles posed by the nature of the current global health crisis. Ex. B ¶ 10; *supra* Section IV. Second, Plaintiffs' counsel have significant experience litigating class and civil rights actions, including extensive and specific experiencing litigating cases involving the rights of incarcerated peoples and individuals at risk of COVID-19 inside detention facilities. Ex. B ¶¶ 2, 4-6; Ex. C ¶¶ 2, 4-5; Ex. D ¶ 4-6; Ex. C ¶¶ 2-5. Finally, Plaintiffs' counsel are prepared to contribute significant resources to the representation of this class. Ex. B ¶ 6; Ex. C ¶ 8; Ex. D ¶ 9; Ex. E ¶ 3; Ex. F ¶ 6. Therefore, Plaintiffs' counsel satisfies the four criteria in Rule 23(g), and they respectfully request appointment as class counsel.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that this Court certify the class pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. Plaintiffs also request that undersigned counsel be appointed class counsel under Rules 23(a)(g). In the alternative, if Defendants contest material issues of fact necessary for class certification, Plaintiffs request the opportunity to conduct discovery related to class certification and a subsequent hearing.

Dated: May 4, 2020 Respectfully Submitted,

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CERTIFICATE OF SERVICE

I affirm that this Motion for Class Certification and supporting brief and exhibits will be served concurrently with, and in all the same manners as, the service of the Summons and Complaint, and the Emergency Motion for Temporary Restraining Order and Preliminary Injunction in this matter.

/s/Allison L. Kriger
Allison L. Kriger

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHARLES RUSSELL, *et al.*, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

WAYNE COUNTY, MICHIGAN; BENNY NAPOLEON, in his official capacity as the Sheriff of Wayne County, *et al.*,

Defendants.

Case No.

Class Action

Index of Exhibits To Plaintiffs' Motion For Class Certification

EXHIBIT	DESCRIPTION
A	Declaration of Shokelle McKay
B	Declaration of Thomas B. Harvey (Advancement Project)
C	Declaration of Allison Kriger (LaRene & Kriger, P.L.C.)
D	Declaration of Alec Karakatsanis (Civil Rights Corps)
E	Declaration of Desiree M. Ferguson (Detroit Justice Center)
F	Declaration of Martin L. Saad (Venable LLP)

DECLARATION OF SHOKELLE MCKAY

I, Shokelle McKay, certify under penalty of perjury that the following statement is true and correct pursuant to 28 U.S.C. §1746:

1. My name is Shokelle McKay. I am 26 years old. I am currently incarcerated in the Wayne County Jail, Division II. Before this I was in Division I.

2. I was in Division I, Unit 1409 when I first got to the jail. I was there from about March 10 – 17, 2020. We slept in bunks. It was an open setting with tables and bunks. Eleven people fit there. We did not have masks or gloves. Meals were brought to the unit and everyone waits in line to grab their own tray. We could either sit on our bunks and eat or eat together at a table.

3. There was one phone. There were 10 people using that phone.

4. I was in the jail about 4 or 5 days when I started feeling sick. I used the phone after someone coughing used it. I know that he was coughing bad. There weren't supplies available to clean the phone. Usually people used their shirt or a sock to clean and cover the phone.

5. I started to feel funny and sick sick almost immediately after using the phone after the guy who was a sick. At first it was a scratchy throat and through the night it got progressively worse. My throat was hurting more and more. I had shortness of breath and a very serious mucus build-up. The nurse came through the unit two times per day. I asked for a kite and filled it out but nothing happened. I felt sick for at least 2 weeks. There was no real medical care and I was never tested for COVID-19.

6. I was sick in Division I for 3 days before I was moved to Division II.

7. After being moved to Division II I was there for two weeks when I started to feel better but I was still coughing really bad at night and there was still a lot of mucus. When I asked a nurse for help and for a kite to fill out I didn't get one. It is really hard to get a medical kite. Mostly the nurses just pass out the medication.

8. They moved two people from the street into our unit. Shortly after they arrived people started getting sick. I had a fever. I started feeling hot so I asked the nurse to talk my temperature and it was 99 degrees. She said she was going to come back and take it again but she never did. After that, the next day I couldn't taste or smell and I had shortness of breath. This lasted 4 or 5 days. There was no medical care.

9. I knew about the virus but I didn't think it could affect the jail this much.

10. The jail is horrible. It's real dirty. There is no system or place to do laundry. They are supposed to do a linen exchange. When you come into the jail they give you green pants and a green top. They don't give out underwear. They are supposed to change the linens and clothes weekly and they don't.

11. When I first got here they didn't do the exchange for a month. I asked them to change it but no one really cares. They come when they come. We have to wash our underclothes in the sink. We have to drink out of the same sink when we want water. They give us three bars of hotel-sized soap and a roll of toilet paper every Tuesday in Division II. You have to use the soap to wash your body. If you also use it to wash clothes it won't last. If you ask for more from the deputies they say no.

12. I only got information about coronavirus after I was sick. I got a COVID-19 information page. The nurse explained a little bit to us. Before I was sick they had given out masks that were supposed to be used for one day. We had to use them for 11 days.

13. On the unit I'm on now we each have a cell with a bed, desk, toilet and sink. There is one shower that 11 people share. Trustees come in and clean it every now and then. There is no set schedule for cleaning the shower. Towels are supposed to be changed every week but it's been at least 2 or 3 weeks. We don't have a washcloth, just a towel.

14. They have turned my unit into a sick ward. Everyone is covid-positive. Medical comes here every so often, mostly once in the morning and once at night. They check your heartrate, blood pressure, temperature if you want and give you Tylenol.

15. They bring our meals to the unit. The guards pass them out.

16. The deputies and trustees that come on our pod sometimes wear gloves and masks, and sometimes they don't.

17. We all share a common area. It is about 3 feet by 20 feet. It is really narrow. There is one phone and one TV that we all share. If you have money you can use a tablet to watch other programs. There are 4 tablets.

18. The jail said that we would get free phone calls and tablet calls. We were supposed to get 2 free 5 minute calls on Tuesdays. But the day we were supposed to get the free video calls the tablets did not work.

19. We don't have cleaning materials. There is a broom and a mop. Sometimes the mop bucket is filled with dirty water. They don't change mop head. There is no toilet brush. There is a green solution that is stored in a closet. We don't get it often, maybe once a week, if that. The deputies control the closet. It is outside of the unit. They don't pass out paper towels. In order to clean you would have to tear your towel to create a cleaning rag.

20. There is no way to quarantine here.

Under penalties of perjury, I declare that I have read the foregoing in its entirety to Shokelle McKay on May 3, 2020.

/s/ Ashley Carter
By: Ashley Carter
Date: May 3, 2020

EXHIBIT 1:
DECLARATION OF THOMAS B. HARVEY
IN SUPPORT OF PLAINTIFFS' MOTION
FOR CLASS CERTIFICATION

DECLARATION OF THOMAS B. HARVEY
IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

I, Thomas B. Harvey, declare as follows:

1. I am the Program Director for the Justice Project at Advancement Project, and one of the plaintiffs' attorneys in this case. I submit this declaration in support of Plaintiffs' motion for class certification to demonstrate that Advancement Project's attorneys, in conjunction with co-counsel, satisfy the requirements of Rule 23(a)(4) and Rule 23(g).

2. Advancement Project ("AP") is a non-profit multi-racial civil rights organization based in Washington, D.C. Rooted in the great human rights struggles for equality and justice, AP exists to fulfill America's promise of a caring, inclusive and just democracy. AP provides legal, organizing, and communications support to grassroots organizations across the country in its Power and Democracy Project, Justice Project, Opportunity to Learn Project, and the Immigrant Justice Project. Since 1999, AP has regularly filed federal litigation, including class action litigation, written reports in educating the public on issues such as voting rights, school discipline, restoration of civil rights for returning citizens, and criminalization of undocumented persons. AP staff have testified before state and federal legislative bodies on civil rights and racial justice.

3. Advancement Project has assigned two highly qualified attorneys to litigate this case: myself and Krithika Santhanam.

4. I have over 11 years of civil rights class action litigation experience. While at Advancement Project, I have been counsel for two federal civil rights class action lawsuits: *Dixon v. City of St. Louis*, 4:19-cv-00112 (E.D. Mo. 2019) and *Swain v. Junior* 1:20-cv-21457 (S.D. Fla. 2020). In *Dixon*, I conducted an investigation into the use of secured money bail to detain impoverished people in St. Louis. This investigation has included interviews with witnesses, experts, government employees, people jailed for their poverty and their families, local attorneys, community members, experts in the functioning of courts and jails, and national experts in post-arrest procedures and constitutional law. *Swain v. Junior* challenges jail conditions in Miami-Dade's Metro West Detention Center during the Covid-19 pandemic.

5. I have been counsel in a number of recent constitutional civil rights class action lawsuits raising similar and related issues. A small sampling of these cases includes: *Pierce et al. v. City of Velda City*, 2015 WL 10013006 (E.D. Mo. 2015); *See, e.g., Templeton v. Dotson*, 4:14-cv-01019 (E.D. Mo 2014, settlement approved in 2014); *Jenkins et al. v. City of Jennings*, 15-cv-252-CEJ (E.D. Mo. 2015, settlement approved in 2016); *Fant et al. v. City of Ferguson*, 15-cv-253-AGF (E.D. Mo. 2015); *Thomas et al. v. St. Ann et al.*, 4:16-cv-1302 (E.D. Mo. 2016); *Powell v. City of St. Ann* 4:15-cv-840 (E.D. Mo. 2015, settlement approved in 2018); *Pierce v. City of Velda City*, 4:15-CV-570 (E.D. Mo. 2015, settlement

approved in 2015); *White* v. *City of Pine Lawn*, 14SL-CC04194 (St. Louis Co. Cir. Ct., Dec. 2014); *Pruitt v. City of Wellston*, 14SL-CC04192 (St. Louis Co. Cir. Ct., Dec. 2014); *Lampkin v. City of Jennings*, 14SL-CC04207 (St. Louis Co. Cir. Ct., Dec. 2014); *Wann v. City of St. Louis*, 1422-CC10272 (St. Louis City Cir. Ct., Dec. 2014, settlement approved in 2015); *Reed v. City of Ferguson*, 14SL-CC04195 (St. Louis Co. Cir. Ct., Dec. 2014, settlement approved in 2020); *Eldridge v. City of St. John*, 15SL-00456 (St. Louis Co. Cir. Ct., Feb. 2015, settlement approved in 2018); and *Watkins v. City of Florissant*, 16SL-CC00165 (St. Louis Co. Cir. Ct., Jan. 2016, Settlement approved in 2017), among others.

6. Ms. Santhanam is a staff attorney at the Justice Project and the Schoolhouse-to-Jailhouse track project at Advancement Project. Prior to joining Advancement Project, she was an associate at Arnold & Porter Kaye Scholer LLP working on complex commercial litigation matters. While at Arnold & Porter, she was exposed daily to federal litigation, including several class actions.

7. Advancement Project is prepared to contribute significant resources to litigating this case.

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge.

/s/ Thomas B. Harvey
Thomas B. Harvey

4-15-2020
Date

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHARLES RUSSELL, *et al.*, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

WAYNE COUNTY, MICHIGAN; BENNY NAPOLEON, in his official capacity as the Sheriff of Wayne County, *et al.*,

Defendants.

DECLARATION OF ALLISON L. KRIGER

I, Allison L. Kriger, declare as follows:

1. I am in my seventh year as an Associate at LaRene & Kriger, P.L.C. and I am one of the Plaintiffs' attorneys in this case. I submit this declaration in support of Plaintiffs' Motion for Class Certification and the related requirements under Federal Rules of Civil Procedure 23(a)(4) and Rule 23(g).

2. LaRene & Kriger is a Detroit-based pre-eminent criminal defense and civil rights litigation firm with a long history of both complex trial and post-conviction work in notable and challenging cases. I have represented and consulted with clients in pre-indictment investigations. My trial and post-conviction

experience includes capital and non-capital state and federal prosecutions for fraud and white-collar crimes, racketeering and conspiracy, public corruption, assault, robbery, homicide, drug trafficking or drug possession, theft and property crimes.

3. In September 2018, I was admitted to the Criminal Justice Act Panel Attorney Program.

4. I have argued before the Michigan Court of Appeals three times.

5. In addition to my criminal practice, I have civil litigation experience in federal and state actions relating to discrimination, police misconduct, wrongful prosecution, complex tort and public nuisance.

6. I also spent two years at Goodman & Hurwitz, PC, a Detroit-based litigation boutique representing victims of governmental misconduct arising under 42 U.S.C. § 1983.

7. N.C. Deday LaRene & Mark Kriger, the partners at my firm, are assisting our highly experienced co-counsel in litigating this case. Combined, Mr. LaRene and Mr. Kriger have 70 years of state and federal litigation and post-conviction experience. They have handled cases in more than 20 states and United States District Courts in more than 25 districts and U.S. territories, and they have argued cases before seven of the twelve U.S. Circuit Courts of Appeals.

8. LaRene & Kriger is prepared to contribute significant attorney time supporting and assisting our co-counsel in litigating this case.

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge.

Dated: May 3, 2020

/s/ Allison L. Kriger
Allison L. Kriger

DECLARATION OF ALEC KARAKATSANIS IN SUPPORT OF NAMED PETITIONERS/PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

1) My name is Alec Karakatsanis and, on behalf of Civil Rights Corps, I am one of the counsel for the named Petitioners/Plaintiff and the putative Class members in this case. I submit this Declaration in support of the motion for class action treatment.

2) I am the Founder and Executive Director of Civil Rights Corps, a non-profit civil rights organization based in Washington, D.C.

3) Prior to starting Civil Rights Corps, I was the Co-Founder of Equal Justice Under Law, a non-profit civil rights organization that was the inaugural organizational recipient of the Harvard Law School Public Service Venture Fund. Before that, I served as an attorney in the Special Litigation Division of the Public Defender Service for the District of Columbia, where I litigated constitutional civil rights claims and complex criminal law issues in federal and District of Columbia trial and appellate courts. Prior to that, I served as a law clerk for United States District Judge Myron Thompson in the United States District Court for the Middle District of Alabama and as an Assistant Federal Public Defender in the Middle District of Alabama.

4) Civil Rights Corps has conducted investigations and engaged in civil rights class action litigation challenging conditions of confinement in jails around the country during the COVID-19 pandemic. I have served as a lead counsel in the following related lawsuits: *Mays v. Dart*, No. 20 C 2134 (N.D. Ill. 2020) and *Swain v. Junior*, 1:20-cv-21457 (S.D. Fla. 2020).

5) This work is similar to, and an extension of, the work Civil Rights Corps have done over the past several years challenging unconstitutional pretrial detention practices around the country, as well as other unconstitutional aspects of state and local criminal legal systems.

6) I have been lead attorney in a number of constitutional civil rights class action lawsuits challenging municipal criminal policies and practices. A small sampling of these cases includes: *ODonnell v. Harris County*, 2017 WL 1542457 (Apr. 28, 2017); *Jenkins et al. v. City of Jennings*, 15-cv-252-CEJ (E.D. Mo. 2015); *Fant et al. v. City of Ferguson*, 15-cv-253-AGF (E.D. Mo. 2015); *Jones on behalf of Varden v. City of Clanton*, 2015 WL 5387219 (M.D. Ala. 2015); *Pierce et al. v. City of Velda City*, 2015 WL 10013006 (E.D. Mo. 2015); *Walker v. City of Calhoun*, --- F. Supp. 3d ---, 2016 WL 361612 (N.D. Ga. Jan. 28, 2016); *Rodriguez v. Providence Community Corrections, Inc.*, --- F. Supp. 3d ---, 2015 WL 9239821 (M.D. Tenn. 2015); *Cooper v. City of Dothan*, 2015 WL 10013003 (M.D. Ala. 2015); *Snow v. Lambert*, 2015 WL 5071981 (M.D. La. 2015); *Thompson v. City of Moss Point*, 2015 WL 10322003 (S.D. Miss. 2015); *Mitchell et al., v. City of Montgomery*, 2014-cv-186 (M.D. Ala. 2014).

7) Those cases have resulted in consent decrees with numerous jurisdictions to change their policies and practices. Many other jurisdictions have worked with us and others to change their practices voluntarily in the wake of these cases. I have worked with legislators, judges, sheriffs, prosecutors, public defenders, Attorneys General, and community members to help identify problems with post-arrest systems and to design constitutional and effective solutions.

8) Civil Rights Corps has also assigned Akeeb Dami Animashaun to litigate this case. As an attorney with Civil Rights Corps and the American Civil Liberties Union, he has litigated (and served as lead counsel) on several civil rights class action lawsuits challenging unconstitutional policies and practices relating to state and local criminal legal systems. A sample of those cases includes: *Briggs v. Montgomery*, No. CV-18-2684-PHX-JAS (D. AZ. 2018); *Daves v. Dallas County*, No. 3:18-CV-0154-N (N.D. Tex 2018); *Parga v. Board of County Commissioners of the County of Tulsa*, No. 18-cv-298 (N.D. Okla. 2018).

9) Civil Rights Corps is prepared to contribute significant resources to litigating this case.

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge.

Alec Karakatsanis

5-03-2019
Date

DECLARATION OF DESIREE M. FERGUSON

IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

I, Desiree M. Ferguson, declare as follows:

1. I am the Legal Director / Senior Staff Attorney of the Detroit Justice Center, and one of the Plaintiffs' attorneys in this case. I submit this declaration in support of Plaintiffs' Motion for Class Certification to demonstrate that the Detroit Justice Center's attorneys, in conjunction with co-counsel, satisfy the requirements of Rule 23(a)(4) and Rule 23(g).
2. Detroit Justice Center ("DJC") is a non-profit social justice law firm established in 2018 that works alongside communities to create economic opportunities, transform the justice system, and promote equitable and just cities. DJC's Legal Services Practice ("LSP") has grown rapidly to meet the needs of our growing client base. Our LSP attorneys provide free legal services to individuals at both ends of the legal system—from pre-trial to re-entry legal services—to prevent people from entering or returning to jail or prison. Our mission is to remove legal barriers that preclude people from remaining stable and productive members of society. Legal matters include: driver's license restoration; warrants for low-level offenses; court fines and fees reduction; traffic tickets;

guardianship and custody matters; child support debt discharge; problems with identification or social security numbers, and more. In addition to serving over 750 individuals, DJC's LSP has established more than a dozen referral partnerships with local community and grassroots activist organizations. The DJC team has become a leading source of expertise for how to transform Michigan's criminal legal system. DJC has filed federal litigation, written comprehensive reports on the factors driving incarceration in Detroit, worked with elected officials to promote legislation and policy, and educated the public on issues related to incarceration and racial justice.

3. As Legal Director, Ms. Ferguson will lead DJC's involvement with this case, and DJC is prepared to commit significant resources and assistance to this litigation, which may include conducting factual investigation; communicating with the Plaintiffs, fact witnesses and expert witnesses; educating the public; performing legal research; and working collaboratively with co-counsel to develop strategy.

4. Ms. Ferguson graduated from the University of Michigan Law School in 1982. During her tenures at Farmworker Legal Services, Wayne County Neighborhood Legal Services' Law Reform Project, and Michigan Legal Services, Ms. Ferguson was part of legal teams that conducted major impact litigation, including class action litigation, in the areas of worker's rights, immigration law, public benefits and housing. Prior to joining DJC in 2018, she worked for 27 years at the Michigan State Appellate Defender Office, where she litigated hundreds of criminal defense appeals for indigent people in all levels of state and federal courts. She also taught a Criminal Appellate Advocacy Clinic at University of Detroit Mercy School of Law, Wayne State University Law School and the University of Michigan Law School. She co-authored a Brief of Amicus Curiae on behalf of the National Conference of Black Lawyers in the Supreme Court of the United States in *Gratz v Bollinger*, supporting the University of Michigan's affirmative action educational programs. Since joining DJC, Ms. Ferguson has worked on one major federal lawsuit.
5. Dr. Amanda Alexander is the founding Executive Director of DJC and a Senior Research Scholar at the University of Michigan Law School. Prior to founding DJC, Dr. Alexander directed the Prison & Family Justice Project at Michigan Law School as a Soros Justice Fellow. In

2019, she was appointed to the Michigan Joint Task Force on Jail and Pretrial Incarceration, a 21-member body tasked with making recommendations to safely reduce Michigan's jail population. Dr. Alexander worked on DJC's previous federal litigation and has also served as attorney for *amici curiae* in federal litigation.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge.

/s/ Desiree M. Ferguson
Desiree M. Ferguson

May 3, 2020

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHARLES RUSSELL, *et al.*, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

WAYNE COUNTY, MICHIGAN; BENNY NAPOLEON, in his official capacity as the Sheriff of Wayne County, *et al.*,

Defendants.

DECLARATION OF MARTIN L. SAAD

I, Martin L. Saad, declare as follows:

1. I am a Partner at Venable LLP and one of the Plaintiffs' attorneys in this case. I submit this declaration in support of Plaintiffs' Motion for Class Certification and the related requirements under Federal Rules of Civil Procedure 23(a)(4) and Rule 23(g).

2. Venable LLP is an American Lawyer Global 100 law firm headquartered in Washington, DC that serves as primary counsel to a worldwide clientele of large and mid-sized organizations, nonprofits, high-net-worth entrepreneurs, and other individuals. With more than 850 professionals across the

country, including California, Delaware, Maryland, New York, Virginia, and Washington, DC, the firm advances its clients' objectives in the U.S. and around the globe. Venable advises clients on a broad range of business and regulatory law, legislative affairs, complex litigation, and the full range of intellectual property disciplines. For the past decade, Venable attorneys have collectively logged, on average, approximately 23,000 hours per year firm-wide representing a wide range of pro bono clients, including in civil rights matters.

3. Several Venable attorneys are assisting our highly experienced co-counsel in litigating this case thus far: myself, Emily Wilson, Khary Anderson, Christopher Moran, Sheena Thomas, and Belle Borovik. Venable paralegal Linda Lowry is also assisting on the matter.

4. I practice in Venable's Washington, DC office and have over 20 years of civil litigation experience, primarily in federal court cases relating to intellectual property, but also including class action matters. Ms. Wilson is a third-year associate in Venable's Baltimore office practicing commercial litigation. She has experience litigating class action matters and has criminal practice experience representing juveniles in D.C. Superior Court and adults in the U.S. District Court for the Eastern District of Virginia in partnership with the Federal Public Defender's office. Mr. Anderson is a first-year commercial litigation associate in the Washington, DC office with experience on pro bono matters, including an

appeal he argued before a three-judge panel of the U.S. Court of Appeals for the Third Circuit during his third-year of law school. Mr. Moran is a fifth-year associate in the firm's tax and wealth planning group with pro bono experience representing incarcerated individuals seeking to challenge the conditions of their confinement. Ms. Thomas is a fifth-year associate working in the firm's e-commerce, privacy, and cybersecurity group. Ms. Borovik is a law clerk in the firm's San Francisco office.

6. Venable is prepared to contribute significant attorney time, paralegal assistance, and other resources supporting and assisting our co-counsel in litigating this case.

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge.

Dated: May 3, 2020

/s/ Martin L. Saad
Martin L. Saad