IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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|---|---|---|
| INMATES OF THE NORTHUMBERLAND COUNTY PRISON, et al., | : | |
| *Plaintiffs* | : | COMPLAINT- Class Action |
| v. | : | Civ. No.: 4:08-CV-00345 |
| | : | Filed via ECF |
| RALPH REISH, in his official capacity as Warden of Northumberland County Prison, et al., | : | (Judge Jones) |
| *Defendants.* | : | |

**MOTION FOR CLASS CERTIFICATION**

1. Inmates of the Northumberland County Prison are seeking through this Section 1983 putative class action to obtain declaratory and injunctive relief from conditions and practices that are systematically violating their constitutional rights.

2. The underlying complaint, which is rooted in the First, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution,

alleges, among other things, systemic defects in the delivery of medical, mental health and dental care to the men and women who are confined in the Prison; life-threatening fire hazards in the institution's housing units; chronic environmental problems in the facility's living and kitchen areas; the hostile effects of profound overcrowding in the Women's Dormitory; the use of protracted bunk-restriction as a form of discipline in the Women's Dormitory and policies associated with that abusive practice; medieval-like conditions and practices in the Prison's basement cells; callous practices associated with the use of four-point physical restraints; the unequal, discriminatory treatment of female prisoners in the contexts of outdoor exercise, work release, and other institutional programs; the policy-based failure to provide incoming inmates with essential clothing supplies; and the lack of a confidential area for inmate consultations with their attorneys.

3. In order to secure class-wide relief from the alleged constitutional conditions and practices, the named plaintiffs are asking the Court to certify the lawsuit as a Rule 23(b)(2) class action on behalf of themselves and all other persons who are incarcerated in the Northumberland County Prison or who in the future will be incarcerated in the Prison.

4. As reflected in the allegations of the complaint and the legal principles embodied in the brief accompanying this motion, this lawsuit satisfies the prerequisites for certification of a 23(b)(2) class action: numerosity, commonality, typicality, adequacy of representation, and appropriateness of final injunctive relief for the class members as a whole.

5. Wherefore, the plaintiffs respectfully request that this Court certify a class under the provisions of Rule 23 (b) (2) of the Federal Rules of Civil Procedure consisting of all persons who are now or who in the future will be incarcerated in the Northumberland County Prison.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Cheryl Tennant Humes, hereby certify that on March 12, 2008, I caused to be served a true and correct copy of the foregoing document titled Plaintiff's Motion for Class Certification Via Electronic Filing to the following:

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| *Defendants.* | : | |

**BRIEF IN SUPPORT OF MOTION FOR CLASS CERTIFICATION**

## I. Background

Inmates of the Northumberland County Prison are prosecuting this Section 1983 putative class action to challenge an array of conditions and practices at the facility that are systematically undermining their constitutional rights. Grounding their claims on the First, Sixth, Eighth, and Fourteenth

Amendments to the United States Constitution, their complaint alleges systemic defects in the Prison's delivery of medical, mental health and dental care to the men and women incarcerated in the Prison; life-threatening fire hazards in the institution's housing units; chronic environmental problems in the living and kitchen areas; the hostile effects of profound overcrowding in the Women's Dormitory; the use of protracted bunk-restriction as a form of discipline in the Women's Dormitory and policies associated with that abusive practice; medieval-like conditions and practices in the Prison's basement cells; callous practices associated with the use of four-point physical restraints; the unequal, discriminatory treatment of female prisoners in the contexts of outdoor exercise, work release, and other institutional programs; the policy-based failure to provide incoming inmates with essential clothing supplies; and the lack of a confidential area for inmate consultations with their attorneys. In addition to requesting a declaratory judgment that the enumerated conditions and practices cross the constitutional line, their

pleading requests an injunction to remedy the ongoing civil rights violations.

To enable them to pursue class-wide injunctive relief, the named plaintiffs are asking this Court to certify this case as a Rule 23(b)(2) class action on behalf of themselves and all other persons who are now or in the future will be incarcerated in the Prison. As reflected in the facts catalogued in the underlying complaint and the legal principles governing certification of 23(b)(2) class actions, this case satisfies all of the prerequisites of the Rule: numerosity, commonality, typicality, adequacy of representation, and the appropriateness of class-wide injunctive relief as a remedy.

## II. Argument

### Class Actions Have Been The Traditional Vehicle For Challenging Systemic Unconstitutional Conditions of Prison Confinement

Over the decades, federal district courts have routinely certified 23(b)(2) class actions seeking to enjoin conditions and practices in county prisons that were said to be systematically

violating the constitutional rights of inmates. See *Jones v. Wittenberg*, 330 F. Supp. 707 (N.D. Ohio 1971); *Brenneman v. Madigan*, 343 F. Supp. 128 (N.D. Cal. 1972); *Jones v. Metzger*, 456 F. 2d 854 (6th Cir. 1972); *Inmates of Milwaukee County Jail v. Peterson*, 353 F. Supp. 1157 (E.D. Wis. 1973); *Inmates of Suffolk County Jail v. Eisenstadt*, 360 F. Supp. 676 (D. Mass 1973); *Rhem v. Malcom*, 507 F.2d 33 (2nd Cir. 1974); *Inmates of D.C. Jail v. Jackson*, 416 F. Supp. 119 (D.D.C. 1976); *Inmates of the Allegheny County Jail v. Peirce*, 442 F. Supp. 1368, 1272 (W.D. Pa. 1978); *Inmates of Lycoming County Prison v. Strode*, 79 F.R.D. 228 (M.D. Pa. 1978); Mawson v. Wideman, 84 F.R.D. 116 (M.D. Pa. 1978); *Campbell v. McGruder*, 580 F. 2d 524 (D.C. Cir. 1978); *Union County Jail Inmates v. DiBuono,* 713 F. 2d 984, 986 (3rd Cir. 1983); *Jackson v. Gardner*, 639 F. Supp. 1005 (E.D.Tenn. 1986); *Shelby County Jail Inmates v. Westlake*, 798 F. 2d 1085 (7th Cir. 1986); *Monmouth County Correctional Institution Inmates v. Lanzaro,* 834 F. 2d 326, 328 (3rd Cir. 1987); *Inmates of Occoquan v. Barry*, 844 F.2d 828 (D.C. Cir. 1988); *Albro v. Onondaga County*, 681 F. Supp.

991 (N.D.N.Y. 1988); *Fambro v. Fulton County, Georgia*, 713 F. Supp. 1426 (N.D. Ga. 1989); *Palmigiano v. DiPrete*, 737 F. Supp. 1257 (D.R.I. 1990); *Women Prisoners of D.C. Dept. of Corr. v. Dist. of Columbia,* 899 F. Supp. 659 (D.D.C. 1995); *Benjamin v. Fraser*, 161 F.Supp. 2d 151 (S.D.N.Y. 2001). The authorization of these and comparable cases to proceed as class actions is a "desirable and logical way to challenge prison conditions." *Inmates of Lycoming County Prison v. Strode*, 79 F.R.D. at 231.

Rule 23(b)(2) class actions are limited to litigation "seeking primarily injunctive or corresponding declaratory relief" and "serves most frequently as the vehicle for civil rights actions and other institutional reform cases that receive class action treatment." *Barnes v. American Tobacco Co.*, 161 F. 3d 127, 141 (3rd Cir. 1998). "[I]t is generally recognized that civil rights actions seeking relief on behalf of classes [challenging a practice or course of conduct] normally meet the requirements of Rule 23(b)(2)." *Stewart v. Abraham*, 275 F. 3d 220, 228 (3rd Cir. 2001). The class action mechanism makes it possible to assert rights

effectively that might otherwise go unprotected. *Neely v. United States*, 546 F. 2d 1059, 1071 (3rd Cir. 1976). It serves as an "effective weapon for an across-the-board attack against systematic abuse." *Jones v. Diamond*, 519 F. 2d 1090, 1100 (5th Cir. 1975). It is "uniquely appropriate in civil rights litigation. " Pearson v. Townsend, 362 F. Supp. 207, 211 (D.C. Car. 1973).

**The Legal Framework And Why It Is Satisfied In This Case**

Rule 23(b)(2) should be read liberally in the context of civil rights litigation. See *Hassine v. Jeffes*, 846 F. 2d 169, 180 (3rd Cir. 1988). Moreover, when determining whether a lawsuit can appropriately be maintained as a class action, the issue is not whether the plaintiffs have alleged viable claims or will ultimately prevail on the merits but whether the requirements of Rule 23 have been met. *Eisen v. Carlisle and Jacquelin*, 417 U.S. 156, 178 (1974). Because it is unnecessary for the representative plaintiffs to establish the merits of their case at the class certification stage, "the substantive allegations of the complaint must be taken as true." *Chiang v. Veneman*, 385 F. 3d 256, 262 (3rd Cir. 2004). See

also *Grant v. Sullivan*, 132 F.R.D. 436, 447 (M.D. Pa. 1990). Furthermore, the interests of justice dictate that even if there is some doubt with respect to whether a class should be certified, a court should err on the side of allowing a case to proceed as a class action. See *Eisenberg v. Gagnon*, 766 F. 2d 770, 785 (3rd Cir. 1985); *Welch v. Bd. of Directors*, 146 F.R.D. 131 (W.D. Pa. 1993); *In Re Lowen Group Inc. Securities Litigation*, 233 F.R.D. 154, 161 (E.D. Pa. 2005).

The parties asserting the existence of a class have the burden of demonstrating that the requirements of Rule 23 have been satisfied. *Horton v. Goose Creek Ind. Sch. Dist.*, 690 F.2d 470, 486 n.28 (5th Cir. 1982). To satisfy the burden, they must show that all of the prerequisites indentified in section (a) of the Rule and one of the prerequisites identified in section (b) are present. *Wetzel v. Liberty Mutual Insurance Co.*, 508 F. 2d 239, 248 (3rd Cir. 1975); *Johnson v. HBO Film Management, Inc.*, 265 F. 3d 178, 183 (3rd Cir. 2001).

The certification requirements of Rule 23(a) embrace two central principles: the need and efficiency of adjudicating the claims asserted in the case as a class action and the assurance that the interests of absentee members will be protected. *Baby Neal v. Casey*, 43 F. 3d 48, 58 (3rd Cir. 1994). The subsection permits one or more members of a putative class to sue on behalf of all other members: "*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*."

Rule 23(b)(2) was largely crafted to permit cases pursuing injunctive relief on behalf of a group of individuals against a general course of conduct. See *Stewart v. Abraham*, 275 F. 3d at 228. It authorizes a class action if the party opposing the class "*has acted or refused to act on grounds that are generally applicable to the class, thereby making final injunctive relief*

*appropriate for the class as a whole*." As demonstrated below, this element as well as the factors prescribed by subsection (a) exist in the present case.

**1. Numerosity**

The numerosity element of the class action calculus should be liberally construed. *Jones v. Diamond*, 519 F. 2d at 1100. Furthermore, because the requested relief in cases seeking injunctions against unconstitutional practices will benefit not only the representative plaintiffs but all persons subject to the challenged practices, a rigorous application of the numerosity requirement is generally unwarranted. See *Weis v. York Hospital*, 745 F. 2d 786, 808 (3rd Cir. 1984). In any event, although "[n]o minimum number of plaintiffs is required to maintain a suit as a class action [and] 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 at 226-27. See also *Wall v. Sunoco Inc.*, 211 F.R.D. 272, 274 (M.D. 2002).

The parties seeking class certification do not have to demonstrate that the members of a putative class is so large that joinder of all members is impossible. They merely have to show that it will be impractical to join all members. Slanina v. William Penn Parking Corp., 106 F.R.D. 419, 423 (W.D. Pa. 1984). Impracticability can be established through a showing that requiring a joinder of all members would produce a hardship or significant inconvenience. Samuel v. University of Pittsburgh, 56 F.R.D. 435, 439 (W.D. Pa. 1972).

The reality that the composition of a putative class is fluid due to the anticipated influx of new members in the future during the pendency of the litigation can render joinder impractical and, thereby, tip the scale in favor of certification. See *Hendrix v. Faulkner*, 525 F. Supp. 435, 443 (N.D. Ind. 1981); *Inmates of Lycoming County Prison v. Strode*, 79 F.R.D. at 232 ("joinder is impractical here . . . because we are concerned with future inmates"); *Mawson v. Wideman*, 84 F.R.D. at 118 (joinder impractical because class would include future inmates);

*Santiago v. City of Philadelphia*, 72 F.R.D.619, 624 (E.D. Pa. 1976) (influx of new inmates emphasized as a factor in certifying a class); *Green v. Johnson*, 513 F. Supp. 965, 975 (D. Mass. 1981) (the number of inmates deemed to be sufficient in light of the constantly revolving nature of the inmate population); *Atkins v. Roan*, 585 F. Supp. 104, 105 (W.D. Mo. 1984) (joinder impractical because class membership was fluid); *Arrango v. Ward*, 103 F.R.D. 638, 640 (S.D.N.Y. 1984) (transitional nature of institutional class made joinder impractical); *Andre H. v. Ambach*, 104 F.R.D. 606, 611 (S.D.N.Y. 1985) (fact that population at a juvenile institution was revolving established sufficient numerosity to make joinder of class members impractical).

The underlying complaint alleges that there are approximately 200 inmates confined in the Northumberland County Prison on any given day and that hundreds of additional men and women are likely to be incarcerated there during the pendency of this litigation. The pleading reflects that injunctions against conditions and practices affecting NCP inmates as a

whole are sought—current as well as future prisoners. These allegations, combined with the inherently fluid nature of the class membership, render joinder of all members an impractical task and readily satisfy the numerosity requirement of Rule 23.

**2. Commonality**

The Rule 23 requirement that there be questions of law or fact common to the class does not create a high threshold. In *Re Asbestos Sch. Litigatio*n, 789 F. 2d 996, 1010 (3rd Cir. 1986). Under this section, there is no need for all issues involved in the lawsuit to be common to each member of the class or for all of the class members to have identical claims. *Hassine v. Jeffes*, 846 F. 2d at 177; *In Re Asbestos Sch. Litigation*, 104 F.R.D. 422, 428-29 (E.D. Pa. 1984). A single common question of law or fact can satisfy the Rule. *Baby Neal v. Casey*, 43 F.3d 48 (3rd Cir. 1994); *In Re Asbestos Sch. Litigation*, 104 F.R.D. at 429.

The commonality prerequisite (like the typicality component) of Rule 23 requires "only that the complainants' claims be common and not in conflict." *Hassine v. Jeffes*, 846 F.

2d at 177. That there may be some differences in the factual circumstances of the class members is not sufficient, in itself, to prevent maintenance of a class action since diverse issues of fact exist in most class actions. See *Samuel v. University of Pittsburgh*, 538 F. 2d 991, 995 (3rd Cir. 1976); *Ardrev v. Federal Kemper Ins. Co.*, 142 F.R.D. 105, 112 (E.D. Pa. 1992). Although varying fact patterns may underlie individual claims, where it is alleged that the same unlawful conduct has been directed at the plaintiffs and those they represent, this is sufficient to meet the common question requirement of the Rule. See *Like v. Carter*, 448 F. 2d 798, 802 (8 Cir. 1971). Furthermore, when a question of law refers to standardized conduct by defendants toward members of the proposed class, a common nucleus of operative facts is typically presented and the commonality requirement is usually met. *Patrykus v. Gomilla*, 121 F.R.D. 357, 361 (N.D. Ill. 1988).

In cases alleging a "systemwide failure," the plaintiffs seeking class certification need not prove that each member of the class has been injured by the deficiencies underpinning the

constitutional claims or injured in the same manner or to the same degree to satisfy the commonality factor. See *Baby Neal v. Casey*, 43 F. 3d at 60-61. "[T]he commonality standard requires only that a putative class share either the injury or the immediate threat of being subject to the injury." *Baby Neal v. Casey*, 43 F. 3d at 60. Where "systemwide deficiencies either violate class members' rights currently or subject them to the risk of such a violation," commonality is established. *Baby Neal v. Casey*, 43 F. 3d at 60-61. If the complaint commencing the putative class action confirms that the putative class members share a common legal claim that a custodial defendants' systemic deficiencies result in widespread violations of their constitutional rights, commonality exists despite varying individualized complaints. *Baby Neal v. Casey*, 43 F. 3d at 61-62.

In the final analysis, the representative plaintiffs need only identify "some unifying thread among the class members that warrants class treatment." *Kamean v. Local 363,* 109 F.R.D. 391, 394 (S.D.N.Y. 1986). The present case has numerous common

legal and factual threads linking the class members' claims. Among the common questions are whether dangerous fire hazards exist in the Prison's housing units and, if so, whether they reflect deliberate indifference on the part of Prison officials to the safety of NCP inmates within the meanings of the Eighth and Fourteenth Amendments; whether the squalid environmental conditions described in the complaint exist and, if so, whether they offend the strictures of the Eighth and Fourteenth Amendments; whether there are systemic deficiencies in the delivery of medical care to NCP inmates and, if so, whether medical services in the institution offend the strictures of those Amendments; whether the conditions and practices alleged to exist in the basement cells are present and, if so, whether they are unconstitutional; and whether the meeting areas in which inmates confer with attorneys during legal visits protect the privacy rights of the prisoners.

In light of the above, the commonality requirement of Rule 23(a) is satisfied in this lawsuit.

### 3. Typicality

A properly certified class requires that the claims of the class representatives be typical of the class as a whole. *Johnson v. HBO Film Management*, 265 F. 3d at 184. When addressing the typicality element, a federal trial court "must determine whether the named plaintiff[s]' individual circumstances are markedly different or . . . the legal theory upon which the claims are based differs from that upon which the claims of other class members will perforce be based." *Johnson v. HBO Film Management*, 265 F. 3d at 184. (citation and internal quotations omitted). "This criteria does not require that all putative class members share identical claims." *Johnson v. HBO Film Management*, 265 F. 3d at 184. As long as the claims of the representative plaintiffs and putative class members "involve the same conduct by the defendants, typicality is established regardless of factual differences." *Newton v. Merril Lynch*, 259 F. 3d 154, 183-84 (3rd Cir. 2001).

The typicality commonality requirements tend to merge, both serving as "guideposts for determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." *General Telephone Co. v. Falcon*, 457 U.S. 147, 157 n. 13 (1982). When the interests of the class representatives and the unnamed class members "coincide," the typicality requirement is normally satisfied. *Scott v. Univ. of Delaware*, 601 F. 2d 76, 85 (3rd Cir. 1979). This outcome is rooted in the assumption that if the interests of the class members and the class representatives are aligned, the class representatives will work to benefit the entire class through the pursuit of their goals. See *Barnes v. American Tobacco Co.*, 161 F. 3d at 141; *Stewart v. Abraham,* 275 F. 3d at 227.

In addition to not mandating that all putative class members share identical claims, case law makes it clear that,

under Rule 23 (a), factual differences among members of a putative class does not "render a claim atypical if the claim arises from the same event or practice or course of conduct that gives rise to the claims of the class members, and if it is based on the same legal theory." *Barnes v. American Tobacco Co.,* 161 F. 3d at 141. (citation omitted); *Stewart v. Abraham*, 275 F. 3d at 227. "[E]ven relatively pronounced factual differences will generally not preclude a finding of typicality where there is a strong similarity of legal theories." *Baby Neal v. Casey*, 43 F. 3d at 58. "[C]ases challenging the same unlawful conduct which affects both the named plaintiffs and the putative class usually satisfy the typicality requirement irrespective of the varying factual patterns underlying the individual claims." *Baby Neal v. Casey*, 43 F. 3d at 58.

"Typicality exists when the legal or factual positions of the class representatives are sufficiently similar to the legal or factual positions of the other class members." *In Re Mellon Bank Shareholders Litigation*, 120 F.R.D. 35, 37 (W.D. Pa. 1988). Claims

are viewed as typical "when the essence of the allegations concerning liability, and not the particulars, suggest adequate representation of the interests of the proposed class members." *Peil v. Speiser*, 97 F.R.D. 657, 659 (E.D. Pa. 1983).

Typicality principally requires the district court to focus on whether the named representatives' claims have the same "essential characteristics" as the class at large. *DeLafuente v. Stokely-Van Camp*, 713 F. 2d 225, 232 (7th Cir. 1983). When determining whether the named representatives' claims are typical, a court must inquire into whether "their individual circumstances are markedly different or [whether] the legal theory upon which the claims are based differs from that upon which the claims of other class members will perforce be based." *Eisenberg v. Gagnon*, 766 F. 2d at 786; *Crasty v. Amalgamated Cloth. & Textile Workers Union,* 828 F. 2d 123, 130 (3rd Cir. 1987). The fact that there may be factual differences between the representative plaintiffs and certain class members is not sufficient to deny certification, unless the atypicality is clear and constitutes

a sufficiently serious conflict that the interests of the class will be placed in significant jeopardy. *Slev v. Jamaica Water & Utility Inc.*, 77 F.R.D. 391, 394-95 (E.D. Pa. 1977). See also *Scott v. University of Delaware*, 601 F. 2d at 85; *Jane B. v. New York Dept. of Social Services,* 117 F.R.D. 64, 67 (S.D.N.Y.1987). The factual and legal circumstances of the representative and class members merely have to be "similar." *Morris v. City of Pittsburgh*, 82 F.R.D. at 77. See also *Hummel v. Br*ennan, 83 F.R.D. 141, 145 (E.D.Pa. 1979); *Safran v. United Steelworkers*, 132 F.R.D. at 402. Rule 23 does not require that each class member be in a position identical to that of every other member or require that the representative plaintiffs have endured precisely the same injuries sustained by the class members; only that the harm complained of be common to the class and that the named plaintiffs demonstrate a personal interest or threat of injury that is real and immediate, not conjectural or hypothetical. *Hassine v. Jeffes*, 846 F. 2d at 177.

Here, the claims of the representative plaintiffs are typical of the claims of the class. As described in the underlying complaint, a broad spectrum of conditions and practices inside the Northumberland County Prison are casting a broad shadow over the men and women who are confined in the 130 year old institution. Although a few of the challenged conditions and practices are unique to gender, the great majority (medical, mental health, fire safety, environmental, legal visits, distribution of clothing, etc.) cut across gender lines and are typical of the claims of the class as a whole. All inmates of the Prison (except for the gender-specific matters) are subject to the same customs, practices, policies and conditions that have injured or threaten to injure members of the class and representative plaintiffs. In addition, the claims asserted in this case are based on common legal theories. Furthermore, in light of the common threads that wind through this litigation and bind the prisoners together, the interests of the unnamed class members will be protected as well as advanced by the named representatives. Under these

circumstances, the typicality requirement of Rule 23 is satisfied in this case.

**4. Adequacy of Representation**

The final requirement of Rule 23(a) is that the representative parties be able to fairly and adequately protect the interests of the class. Resolution of this issue turns on two considerations: whether the attorneys retained by the named plaintiffs are qualified, experienced and generally able to conduct the litigation and whether the named plaintiffs have interests that are antagonistic to or in conflict with those they seek to represent. *Wetzel v. Liberty Mutual*, 508 F. 2d at 241; *Barnes v. American Tobacco Co*., 161 F. 3d at 141. Conflicts of interest are rare in 23(b)(2) class actions requesting only declaratory and injunctive relief. New Directions Treatment Serv. v. City of Reading, 490 F. 3d 293, 313 (3rd Cir. 2007). As long as one of the representative plaintiffs is adequate, the adequacy of representation requirement is met. *Crasty v. Amalgamated Cloth*., 828 F. 2d at 128

With respect to the question of competency of counsel in this case, attorney Jere Krakoff has extensive experience litigating complex civil rights cases, particularly conditions and practices lawsuits involving both local jail and state prisons, many of which were class actions. Over the course of more than three decades, he has prosecuted numerous Section 1983 class actions (and comparable class actions under other federal statutes) in Pennsylvania and other federal district courts throughout the United States as an attorney with the Lawyers Committee For Civil Rights Under The Law (in Jackson, Mississippi); staff counsel with the ACLU National Prison Project (in Washington, D.C.); staff counsel with Neighborhood Legal Services Assn. (in Pittsburgh); and, more recently, in private practice (in Pittsburgh). His presence in the case as plaintiffs' lead counsel, coupled with the participation of Lewisburg Prison Project attorney, Cheryl Humes, will assure the "vigorous prosecution of claims," as Rule 23 demands. See *Crasty v. Amalgamated Cloth.*, 828 F. 2d at 129.

The matter of antagonistic interests does not exist here and, thus, poses no barrier to certification of this case. There are no apparent conflicts of interest between the representative plaintiffs and the inmates they propose to represent. The conditions and practices challenged in this litigation threaten all class members. Therefore, eliminating them will enhance the circumstances of the respective members and inure to their benefit.

**5. The Criteria of Rule 23(b)(2)**

As noted, a proposed class action may be maintained if, in addition to satisfying each of the requirements of Rule 23(a), the case falls under one of the subsections of 23(b). This action falls comfortably under subsection (b)(2) which authorizes a class action of the party opposing the class has acted or refused to act on grounds that are generally applicable to the class, thereby making final injunctive relief appropriate for the class as a whole.

The underlying complaint's allegations are predicated on a theory that the defendants have acted or refused to act on grounds that are generally applicable to the class as a whole. The conditions and practices are systemic—rooted in entrenched policies, customs, acts and omissions which have broad application to NCP inmates and which will require a series of injunctions to remedy.

## III. Conclusion

For the reasons expressed above, this Court should certify a Rule 23(b) class consisting of all inmates who are now or who, in the future, will be incarcerated in the Northumberland County Prison.

Respectfully submitted,

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**CERTIFICATION PURSUANT TO LOCAL RULE 7.8(b)(2)**

The undersigned hereby certifies, pursuant to Local Rule 7.8(b)(2) that the foregoing Plaintiffs' Brief In Support of Motion For Class Certification contains four thousand two hundred ninety-nine (4299) words, based upon the word count feature of the word processing system on which it was prepared.

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CERTIFICATE OF SERVICE

I, Cheryl Tennant Humes, hereby certify that on March 12, 2008, I caused to be served a true and correct copy of the foregoing document titled Plaintiff's Brief in Support Motion for Class Certification Via Electronic Filing to the following:

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